

INDIA AND CONSTITUTION MAKING

**I N D I A
AND
CONSTITUTION MAKING**

**BY
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INTRODUCTION

It is a commonplace of political theory that constitutions are of secondary importance. It is a society's structure, ruling ideas, political habits, which determine whether it shall prosper or fail. If these are favourable, an ill-framed constitution may be no fatal weakness; if they are deficient the best constitution will bring prosperity. There are constitutions now in force which provide equality before the law for all citizens, but in practice permit large classes to be deprived of that right. There are constitutions providing as fundamental rights exemplary lists of civil liberties, whose citizens live in fact under more or less drastic tyranny.

Nevertheless the constitution is not a matter of indifference. It is designed to achieve important purposes, and it may be well or ill constructed. If its purposes correspond with the ruling trends in the life of the community, the success of these trends may be greatly promoted, and more especially so if it is well contrived. If the purposes of the constitution and of the community do not agree, at best social progress is hampered; in less fortunate instances the clash may engender reaction or chaos.

In discussing a constitution for free India therefore, it is necessary first to consider what purposes future public policy must serve. A primary purpose in many constitutions is to hold the society together by harmonising the interests of territorial, linguistic, religious and other such groups. This may be called the formal problem of constitution making. In the past, in accordance with prevailing ideas, this has been done mainly by freeing the members of these various groups from external restraints, legal or customary, which earlier regimes imposed upon them; that is by giving them freedom to compete in the struggle for life, by holding the ring for them.

We have to solve a problem of this type, and a highly complicated one. We have to harmonise the divergent interests and urges of religious communities—three major, and acutely antagonistic, and several minor; of the nonarchical states and the republican provinces; of a dozen or more major linguistic groups; and of substantial retarded and under privileged populations, the Scheduled Castes and the tribes, as opposed to the more advanced majority.

According to traditional views a constitution which was intended to do no more than reconcile these many groups of divergent interests, and succeeded in doing so, would be a great achievement. Yet, as is widely recognised, the problems before us only begin here. The reconciliation of these divergencies is a problem to be got out of the way as soon as possible so that we may set about the still more important tasks of raising the standard of living to a tolerable level, improving in a similar degree the educational standard, and generally modernising the social system—in short liberating all citizens not only from legal restraints but from the economic, social and mental bonds which hamper their development as free personalities.

It will not be disputed that these are the main problems before the country, nor that they are of immense difficulty. It will however be admitted that they are probably now soluble, whereas in previous ages they were not soluble even in principle; because technology has now furnished us with the means to wealth, education, communication and the like, adequate to the purpose. It is now merely a question of the will and the appropriate social structure, and we can apply our newly acquired resources to these purposes and achieve them.

Those who drew up the new constitution therefore ought not to have satisfied themselves merely with producing a solution of the first set of problems, the formal problem. For despit^e Part IV (Directive Principles of State Policy) that is what they have done. These principles remain unrelated to the formal provisions, which are not specially suited to carry them out. The draftsmen ought also to have considered whether their constitution would help or hinder

the realisation of these Principles, the solution of what I have called the second type of problem. In view of the possibly unique difficulty of the task of economic and social reorganisation which confronts this country, the constitution makers would have been quite justified in departing from tradition and producing a constitution of a new type, designed to facilitate this reorganisation. But in fact the old tradition has already broken down. Thirty years ago Russia, in a plight not unlike our own, broke away from the accepted formalities, the tradition of holding the ring, and adopted a constitution intended to suit a society which had taken upon itself as a collective task to modernise itself and raise its standard of living. The next year Germany produced a constitution, less revolutionary but showing the same trend. It is not necessary therefore for us to assume the burden of complete originality. It is true that neither of the constitutions mentioned has yielded entirely satisfactory results; but nor have more orthodox constitutions always done so.

But would not this proposal render the task of drawing up the constitution impossibly difficult? It may be thought that the constitution makers already had enough on their hands with their admittedly baffling formal problems; in addition they had been asked to consider how the country could overcome its social and economic difficulties might they not have been tempted to give it up in despair? On the contrary, it is the view of this book that the two sets of problems can best be solved together.

The partition of the country, and the acceptance of the principle of constitutional rule in most of the states have eased the formal problem. The draft constitution will now be passed by the Constituent Assembly and accepted by the country with little protest. But it is a matter of acquiescence rather than agreement, and the dissatisfaction of the underprivileged will soon assert itself in one way or another. If it does not arise in the form of communal or provincial discontent it will show itself as class hatred, and because of the new constitutional homogeneity this will be more easily aroused and more formidable. Indeed there is already to be noticed a shift from concern with the formal problem to concern with the social and economic problem.

the class problem. The Delhi Constitution is in danger of being out of date before it is passed.

A constitution of the traditional type, designed to hold the ring for the struggle for life, is attractive mainly to those who have some prospect of holding their own in the ring, those who have a good start or have done well in the world. The less fortunate have less reason to think well of it. In India, any reckoning must class as the less fortunate a big majority of the population. The position of the country is therefore highly dangerous: a majority of the population is potentially seditious, and being enfranchised it is likely to be aroused very soon to a consciousness of its position. The Delhi Constitution takes no notice of this possibility, or provides against it only by means of limitations upon the liberties it grants the citizens, and by granting emergency powers to the executive.

The following chapters survey the most important alternative suggestions that have been made for the solution of the constitutional problem. They show that almost all make the same error as the Constituent Assembly has made: that in fact the country has been so obsessed with the formal problem that it has overlooked the graver problem of class relations.

That problem can no longer be neglected. Recent events have brought it prominently before the public. It is hoped therefore that people will now be more willing to consider the one solution which was put forward having in view both the formal and the social problems. That is the Draft Constitution prepared for the Radical Democratic Party more than three years ago by M. N. Roy. It tackles the formal problem on accepted principles of democracy and freedom. It tackles the problem of class antagonism by the simple but drastic method of giving the people real power, trusting that power will bring responsibility. In other words, it takes democracy seriously. That may seem naive, but has sophistication proved such a great success?

June 16th, 1948.

CHAPTER I

THE COUPLAND SCHEME

THE COUPLAND SCHEME, set forth in Prof. R. Coupland's book *The Constitutional Problem in India*, Part III (1944) is important because it suggests a type of solution of the communal problem which does not go so far as complete separation and yet is conceivably acceptable to the Muslim League, and because it has apparently influenced British official thinking, so that its main idea appears in the Cabinet Mission's compromise proposal of May 16, 1946.

It develops suggestions made by the late Sir Muhammad Iqbal and the late Sir Sikander Hyat Khan for regional groups of provinces and states. Its central proposal is the division of the country into four regions (or two regions and the rest), each comprising provinces and states, with an 'agency centre'. It is claimed that the regions are marked out on an economic or geographical principle: they correspond to the three main river systems, the Indus, the Ganges down to the Bengal-Bihar frontier, and the Brahmaputra with the Ganges delta. The fourth region is the rest of the country, compendiously the Deccan. They are natural divisions, but they also correspond closely to the communal divisions, so that two of the regions are the Muslim-majority or Pakistan areas, and a centre in which the four were equally represented would achieve a communal balance in a relatively natural and unobjectionable way.

The agency centre would have the minimum powers necessary to render India a unit in relation to the outer world. These powers are: defence and foreign affairs, foreign trade or tariffs, and currency (and following from them emigration, immigration and naturalisation); and the power to raise finance for these purposes. Coupland adds communications as desirable but not essential, and minor services such as the census and the scientific surveys.

There would be a central legislature, but it would be quite small. Each region would have equal representation, by persons appointed by, but not members of, the regional legislatures. Since they would be responsible to these legislatures, the communal balance would be preserved. On communal questions a two-thirds or three-fourths majority might be required.

The cabinet would be elected by the legislature. It would consist of ministers for defence, foreign affairs, and finance, and, if that were within its purview, communications. One of these would be the prime minister, and there might be one or two ministers without portfolio. The prime minister would hold office for the period of the legislature, and the others for shorter periods. The prime minister would be alternately a Hindu and a Muslim. The other ministers would be drawn from the regions according to a fixed rule.

As an alternative to this plan of a central legislature and executive, it is suggested that a small council, constituted in the same way, might perform both legislative and executive functions.

The position of the states under this scheme is considered at some length. Preferably they would participate in their respective regional governments, and be represented at the centre through these. If not, they might still accept the regional principle for representation at the centre, as the provinces other than those of the two Muslim-majority regions might do, *i.e.* they would not constitute themselves into regions except for purpose of representation at the centre.

On other matters concerning the states, Coupland assumes that the constitution would guarantee the territorial integrity and the existing governments of the states, *i.e.* their governments could call in the aid of neighbouring states and provinces to suppress open rebellions. Constitutional progress towards democracy would not be precluded, and in the circumstances would be expected to take place rapidly.

Since the centre controls few subjects the autonomy of the states would be largely preserved, but this in practice would mean that all except the largest states would be forced to participate in the regional or other grouping arrangements.

Paramountcy would vanish, but some corresponding arrangement might be needed to settle disputes about succes-

sion. Coupland suggests a panel of princes, or alternatively that the British Crown should retain this right; he recognises that Indian opinion would probably prefer the former.

He discusses the British "obligations", and concludes that those which have hitherto been recognised in relation to the princes, the minorities, the backward tribes, and the British business community, all vanish in the new situation, not only because that is the spirit and implication of Dominion status and the Cripps proposal (which when he wrote "still stood"), but also because it would be a practical impossibility for Britain to carry out such obligations even if she wanted to. The obligation to give assistance in defence for an interim period remains, but whether India chose to be a Dominion or not, this would have to be decided by negotiation and laid down in a treaty.

Coupland does not discuss the working of the regions at any length. He accepts the autonomy of the existing provinces and states, and concedes that the economic purposes of the regions could be served by *ad hoc* agreements among their governments. He expects that the Muslim-majority areas would want to "regionalise", while the Hindu-majority areas might not. He argues however that regionalism would have advantages. In the economic development of the country the rivers, and the irrigation and hydro-electric schemes which depend on them, must play a central part, and the existing provinces and states are too small to tackle these schemes adequately. The Tennessee Valley Authority shows what can be done, and what kind of authority is needed.

The provincial constitutions are also dealt with briefly. He is not satisfied with the existing constitutions, and points out that of the four or five which have been given a reasonably long trial, that of the Punjab is the only one which has worked well, in the sense of yielding a stable government.

He assumes that the constitutions will continue to centre round a parliament, and that the existing electorates, reservations and weightages will be continued, at least for some time. He suggests more attention to functional representation, and to indirect methods of election, as by panchayats, in order to minimise communal friction. Second chambers, he considers, have not fulfilled expectations in diminishing communal feeling.

A number of safeguards are suggested for inclusion in provincial constitutions, all with a view to reassure the minorities. Since this is their purpose, the fundamental rights proposed are limited to the traditional democratic liberties. In addition he provides for communal quotas in state employment, special rules to apply when communal matters come before the legislature, a provincial communal council of respected persons to arbitrate in disputes, all-India and if necessary foreign arbitrators on graver matters of legislation, constitutional provision for coalition governments, and governments elected by but not continuously dependent on the legislature, as in Switzerland.

Finally in regard to the procedure whereby the constitution is to be decided upon, Coupland is opposed to a constituent assembly, at least as popularly conceived. Such a body would be too large, and its election by a broad electorate would stir up the very communal passions it is its main business to allay. He agrees only that the final draft will have to be ratified by the electorate in one way or another. His criticism amounts to a proposal to leave the drafting of the constitution to the existing party leaders.

Having apparently influenced British thought on the subject, the Coupland scheme is of great importance. It is unfortunate therefore that many people must have derived their knowledge of it from the attack made upon it by the Communist Party of India, who have denounced it persistently as an imperialist conspiracy. Without any desire to defend Coupland, it is worth while to point out that this attack seriously misrepresents it.

G. Adhikari's pamphlet *The Imperialist Alternative* states its main criticisms thus:

"The Princes, says Coupland, would not agree to join either Pakistan or Hindustan.

"If Congress and League cannot unite together.....then the imperialists are surely going to use the Princes to continue what Gandhiji calls the 'permanent vivisection of India' and to perpetuate their monopolist domination.

"This is just the key-point of Coupland's scheme:..

"Princely India, he says, may form a separate dominion having direct treaty relations with Britain! ... Coupland visualises a separate dominion based on their States (see map reproduced from his book).

"His mouth waters at the proposal of a large tract of contiguous territory between Sind and Orissa being more or less completely at the disposal of the Empire He thinks such an arrangement would not seem undesirable from the British side from a purely military point of view :

" 'A group of aerodromes occupied by British airmen in the heart of India would accord with the strategic needs of the British Commonwealth' .

"This is how Coupland dreams of using the Princely States in the post-war 'independent' India to safeguard British Empire's strategic air routes .."

It is true that Coupland discusses a States Dominion, but he rejects it. He rejects it on the ground that there is no sufficient reason for separation, no such reason as makes Pakistan a defensible proposition; secondly that the arguments, economic and other, against Pakistan apply with equal force against this plan; and that far from safeguarding the Princes' prerogatives it would provoke still more violent hostility against them.

But further, he goes on to argue against the continued reliance on British military support which would be the main hope of the Princes in forming a States Dominion and is the communists' main objection to it. He makes the statement quoted, that British aerodromes in the heart of India would accord with the strategic needs of the British Commonwealth, but at once proceeds: "But it would not accord with the moral implications of British policy." This is surely a direct negative, and completely destroys the effect of the previous sentence. Indeed a bad case of quoting out of context!

British military support, Coupland argues, would defeat the Princes' own purpose in asking for it, since it would arouse so much opposition. And finally the British public would not agree to give it: "Would they acquiesce in the prospect of such aggressive British action ...? It is not dishonourable to say No. On the contrary, honesty requires that no hope be held out of any other answer."

Finally, discussing the feasibility of a States Dominion he decides emphatically against it, and the map reprinted in the communist pamphlet with the remark that "his mouth waters" at it is one of his principal arguments against the situation it represents. "An India deprived of the States would have lost all coherence.....The practicability of Pakistan must be admitted, but the more the separation of the States from British India is considered the more impracticable it seems."

"Under the plea of protecting the minorities," Adhikari writes, "the 1935 Constitution gave a safe place to British monopoly interests.....The British interests together with the Princes were to be used at the Federal Centre to be formed for the purpose of retaining imperialist monopoly."

"The new communal award this time is going to be much worse.....the 'weak' Agency Centre will be nothing but the stronghold of British monopoly interests capable of holding up the progress and development of the entire country in the interest of British Imperialism."

Actually Coupland specifically argues against safeguards for British business or the British resident community, and also points out that the old argument from the interests of British holders of Indian debt no longer has any force since the debt is the other way round. "India 'cannot be a second-class Dominion,'" he says.

The communist criticism of Coupland seems to be entirely misdirected. It is not the case that Coupland is arguing nominally for one result but really thinking of and working for another. It is quite clear that the decisive groups in Britain, whose views Coupland shares, have given up the idea of holding India against her effective will. They want to retain a connection with India, for trade and strategic purposes, but they realise that this is now possible only by free agreement with an indigenous Indian government. Their endeavours since 1942 have been directed at achieving a compromise among the three powerful sections of the Indian propertied class, so that a regime of reasonable stability can be established, with which they can negotiate the agreement they want. Coupland's is in fact an intelligent and well-informed discussion of the possibilities of such a compromise. The communists' purpose in denouncing it is evidently to bring about

unity between Hindus and Muslims by exciting a common opposition to the British and the Princes. The method has been in operation for the last 25 years as a Congress policy, and has failed. It is hardly likely to succeed now that the principal object of hatred is ceasing to be an important factor.

The criticism of Coupland which ought to be made is not against the plans which he rejects but against that which he propounds, not against the comparatively unimportant British interests which might persist under his scheme but against the kind of Indian interest which it would instal in power and the constitutional implications of placing in power interests which are so strongly divided among themselves.

Coupland takes an entirely conventional, short-term view of Indian affairs. The established, vocal parties and interests, the Congress, the League and the Princes, are the only ones he considers seriously. Almost all his discussion therefore is concerned with the dispute between the first two, and the solutions he considers conform, at best, to the standards of conventional democracy. His discussion is well done, and within his limits it is hard to point to any grave error of judgment. His proposed principle of a communal settlement is indeed the only one which seems to have any chance of acceptance in present circumstances, and it has been adopted by the Cabinet Mission.

It is of course defective. The three-tiered arrangement is clumsy and the centre weaker than is desirable, though this is offset to some extent by the grouping of provinces and states according to the needs at least of some important constructive functions. Those who denounce this type of constitution as unlikely to serve the purposes of an independent India determined to bring about drastic improvements are justified. They can only be met by the answer that on prevailing assumptions, which are shared by Coupland and the Cabinet Mission, nothing better can be done. Compromises are seldom satisfactory. If it is the practical way to independence it must be accepted.

It is defective: everybody admits it. But it is no good merely criticising its defects and resisting the promulgation of a constitution of this type, unless one is prepared to renounce the assumptions which make this kind of compromise neces-

sary. The fault is in the prevailing assumptions which necessitate this hamstringing of the future free India; what is necessary is to transcend the limits which circumscribe Coupland's vision, which confine his attention to the bourgeois and feudal interests and hence concentrate it on the communal dispute. For there are other interests, yet ill-organised and little heard, but potentially far more weighty, and if these were given the centre of the stage the new regime could be far more beneficial to the public, and in particular the communal solution would be easier of attainment and more solid when established than the vicious and probably precarious compromise which is the best that can be hoped for along orthodox lines.

It hardly needs any detailed repetition of Coupland's proposals to show his limitations. He considers the present franchise adequate. He makes no postulate of democratic reform in the states, though he is probably right in assuming that reforms approaching the provincial level would be achieved fairly soon. The rights he proposes to guarantee in the constitution are confined within the limits of liberal democracy. He is opposed to a broad-based constituent assembly, and evidently prefers negotiation between the present representatives of the main recognised interests. He plainly says that the body which draws up the constitution would do well to confine its attention to the minimum necessary for success, namely a communal agreement; that is, he advocates retention of as much of the status quo as is possible consistent with dominion self-government. He is so obsessed with the communal difficulty that he fails to consider other urgent problems. His criterion of a satisfactory provincial constitution is the stability of the governments which have been formed under it, not the work they have done for the public benefit.

And on the conventional assumptions his judgments cannot easily be questioned. The communal dispute does dominate Indian politics, and some solution of it is necessary before anything else of importance can be done. If political stability and law and order are not maintained nothing will be achieved. The great bulk of the poorer people are incapable of asserting themselves effectively in politics as it is, so that the immediate effect of a wide extension of the franchise would be

small, even if the flagrantly improper methods used in the last provincial elections by both the big parties were somehow prevented. A liberal democracy, if it were attainable, would be an immense improvement on the present state of things. There is as yet no very impressive evidence of a new turn in national politics, a new force which could challenge the monopoly of the big upper-class parties. It seems therefore that there will for a fairly long period be no alternative to the capitalist economy and the traditional democracy for which these parties stand; and it is that is so Coupland's self-limitation is justified and his proposals are probably on the right lines.

But plausible as this inference is, I believe it to be mistaken. This is not impatient idealism, rejecting the slow but tried and sure path of gradual advance; it is a conviction that the path is no longer one of sure advance. Coupland's exploration of it is enough to show that it is at best a dead end. I believe it is worse: it is a path to disaster. Another path must be found.

CHAPTER II

THE SAPRU PROPOSALS

WHILE the Coupland scheme attempts a compromise on the communal issue by conceding what may be called quasi-partition, the substance of Pakistan, the Sapru Committee's suggestions try to offer the Muslims enough in other ways to induce them to consent to a united India. The political independence and the standing as jurists and administrators of the sponsors of the plan (it was drafted by Sir Tej Bahadur Sapru, Mr. M. R. Jayakar, Sir Gopalaswami Ayyangar and Kunwar Sir Jagdish Prasad in consultation with many other distinguished men) make it the most important of the unitarian schemes of the traditional type.

The following is a short summary of the more definite recommendations:

They apply to British India only. Provinces cannot stand out or secede. Provision must be made for accession of the states, but the establishment of the union must not depend upon such accession. Once a state has joined it cannot secede. The provisions (see below) in regard to the selection of a head of the union, and other provisions limiting central paramountcy jurisdiction over the states, are calculated to make it easier for the states rulers to agree to the union scheme, to promote cooperation between the states and the rest of India, and to speed up democratic development in the states.

The constitution-making body shall be elected as provided in the Cripps proposals, i.e. from the provincial lower houses in proportion to population, but shall number only 160 members, 16 representing commerce and industry, landholders, universities, labour and women; 51 Hindus other than Scheduled Castes; 51 Muslims; 20 Scheduled Castes; 7 Christians; 8 Sikhs; 3 the aboriginal tribes; 2 Anglo-Indians; 1 European; 1 others.

There shall be a head of the state, holding office for five-years. His mode of appointment is left to the constitution-

making body, but the Committee without giving its final approval recommends for the consideration of that body five alternative suggestions by one of its members; of these five three confine the choice to a ruling prince. ". . . it is unthinkable that the election of the President or Head of the State directly by a population of 400 millions will be practicable or can be expected to yield satisfactory results. It is therefore suggested that the election may be by a College consisting of a limited number of representative electors. Extreme democracy would demand that the candidature for the office should be left unrestricted This is obviously too big a leap in the dark." The head of the state has the powers now held by the king, and any others the constitution may confer on him, but is to be a strictly constitutional head.

There are two central chambers, the assembly and the council of state. How the latter, presumably representing the unit governments, is to be constituted is not suggested. The assembly is to be elected directly from the whole country (except the states) by adult franchise, except ten per cent. of its members, who represent commerce and industry, landholders, universities, labour and women. The rest of the seats are distributed among the six communities, Hindus, Muslims, Scheduled Castes, Sikhs, Christians, Anglo-Indians and others, in proportions to be decided.

If the Muslim community agrees to the substitution throughout of joint electorates with reservation of seats for separate communal electorates, the Muslim seats shall be equal in numbers to those of the Hindus other than Scheduled Castes (excluding the special interests). If this is not agreed to in its entirety the Hindus shall be at liberty to refuse the claim to parity and further to ask for a revision of the Communal Award. This provision of parity applies only to the lower house of the central legislature, not to the provincial legislatures or governments, nor to the services.

The numbers of representatives of other communities are not laid down, but the Sikhs and Scheduled Castes should be given bigger representation than they obtained under the 1935 Act.

The powers of the central government shall be as small as possible but shall include foreign affairs, defence, relations-

with the states, communications, commerce, customs, currency, posts and telegraphs, settlement of inter-unit disputes, coordination where necessary of legislation and administration of units, and such other powers as may be required for assuring the safety and tranquillity and the political integrity and economic unity of India, and for emergencies. Lists of central and provincial powers must be given in the constitution, residuary powers to vest in the units. There shall be free trade within the union.

The six communities shall be represented in the cabinet as far as possible in proportion to their strength in the assembly. The cabinet is collectively responsible to the legislature. The prime minister is leader of the majority party or coalition, and he appoints the other ministers, including the deputy prime minister, who shall not be a member of the same community as he. Alternatively the two houses of the legislature in a joint session shall elect the cabinet and the prime minister and his deputy, who shall not be members of the same community.

The head of the state appoints the chief justice of the supreme court, and the other judges in consultation with him. The chief justice of a unit high court is appointed by the head of the state in consultation with the head of the unit and the chief justice of India, and so on.

The Committee considers the present system of communal representation in the central public services generally fair, and proposes that it be continued for the interim period, but holds that the future governments, central and provincial, should be free to alter it. The union public services commission are to be appointed by the head of the state in consultation with the prime minister. The unit public services commissions are appointed by the unit heads in consultation with their prime ministers.

At the centre and in each unit there shall be a minorities commission, composed of a representative for each community in the legislature, elected by the members of the community in the legislature, but not from among the members of the legislature. The commission shall keep a watch over the interests of minorities, being empowered to call for all necessary information, and shall report periodically to the prime minister

on the policy pursued in legislation and administration in regard to the implementation of the non-justiciable fundamental rights assured by the constitution to the minorities. These reports shall be considered by the cabinet and placed before the legislature with a statement on action taken or reasons for disagreement.

A special committee of experts shall draw up a declaration of fundamental rights, which should include: (1) the liberties of the individual, (2) freedom of the press and of association, (3) equality of rights irrespective of birth, religion, colour, caste or creed, (4) religious toleration, (5) protection to language and culture, (6) specific provisions for the complete abolition of the disabilities of the Scheduled Castes, and safeguarding of special religious customs. These rights are to be divided clearly into the justiciable and the non-justiciable. The courts will be responsible for the enforcement of the former; for the latter the minorities commissions are provided.

No constitutional amendment other than of a purely formal nature shall be moved for five years after the constitution comes into force. Thereafter an amendment shall require six months notice, and must be passed by a two-thirds majority in each house of the central legislature, and by the legislatures of two-thirds of the units.

The report is the most serious attempt yet made to deal with the difficulties which would face a united India whose politics were conducted according to current assumptions. The extremes to which its experienced and able authors have had to go to meet them shows how great those difficulties are.

A united India would need an impartial head. The search for a man who could remain above the battle and would be trusted by the communities as likely to do so, leads them to rule out popular election and to recommend restriction of the choice to members of the princely order. Short of calling in a foreigner it is quite possibly the best choice, granted that the quality needed above all others is communal impartiality. But the disadvantages are obvious—the generally undemocratic prejudices of the princes are notorious, so that the state would be saddled with a head who as regards all its constructive tasks

would probably be at best a figurehead. The elected head of the state could be a leader: in this type of constitution he is necessarily reduced to a holder of the balance, a passive figure, if no worse.

That would not matter, perhaps, if the function of leadership could be performed by the legislature, the cabinet and the prime minister. The Committee hope that with a common electorate genuine political parties would replace the communal parties of today, and that working together would in time lead to greater confidence and the eventual abolition of these communal reservations. The assumption of this argument obviously is that the fears of the minorities are baseless, or at least that their ground can be removed by the right type of electoral and administrative machinery. But these fears are more serious than that, and so far as we can judge their ground will remain while the type of economy that prevails is highly competitive and restrictive. In these conditions it is probable that the abolition of the separate communal electorates would increase fears and accentuate communalism. In any case, in spite of the common electorate the whole structure of the scheme is communal—unavoidably so, it is admitted—and it seems questionable whether any very powerful united urge to progress would make itself felt through such a machinery.

There is in particular a massive obstacle to this hoped-for evolution away from communalism in the existence at the very centre of the scheme of a grave communal injustice. The Hindus would have to accept in the federal lower house, the most important legislative body, perpetual parity with a community of less than half their numbers. This would be at least as irritating, and as difficult to forget, as an unwanted frontier. The Partition of 1905 caused six years of agitation, but the Communal Award has caused fifteen years of agitation and has poisoned the political life of Bengal, though it deprives the Hindus of that province of only 25 percent of their due representation. It has been objected further (by Mr. N. M. Joshi, in his Note to the Committee's Report) that the Muslim weightage is obtained at the expense of the Scheduled Castes and the aboriginal tribes as well as of the Hindus, and that this is unjustifiable. What he says is true of the constitution-making body, though not of the union assembly, since no figures are

given. The representation of these communities in the union assembly could be increased—at the cost of still further decreasing the Hindu quota. But the parity between the Caste Hindus and the Muslims is essential to the scheme, and it is extremely, and what is more, glaringly unfair. Even if it were accepted by the majority of Hindu leaders in a desperate effort to save the unity of the country, it would never cease to rankle. Once conceded it would be almost impossible to revoke, and while it lasted it would perpetuate the existence of a bitterly communal Hindu party. Mr Joshi says he would prefer a fair partition, such as that provided for by Mr. C. Rajagopalachari's formula, and probably a great many Hindus would agree with him.

Mr. Joshi also remarks that the Committee have given too much importance to their aim of securing joint electorates; he of course prefers joint electorates, but would concede separate electorates rather than unreasonable weightages. Again he seems to be on the side of reason. The long and impassioned argument against separate electorates in the Report seems out of place in an otherwise balanced document. It is hard to believe that this device has been responsible for so much evil as is here alleged. That it is the principal cause of the present communal ill-feeling is surely unplausible: far weightier historical causes have been at work than a mere electoral device. It is unlikely that the method of election should react so strongly upon the feelings of the electorate. That it should affect the conduct of the persons elected is of course likely: joint electorates would compel Hindu legislators to profess concern for the welfare of Muslims, and vice versa, whereas as it is they can afford to display indifference. It is usually argued *a priori* that separate electorates must favour the return to the legislatures of communal extremists. It is not clear that this will always be the tendency. In some circumstances the separation of the communities in the election campaign would divert attention away from the communal issue. It is often stated in general terms that this encouragement to communal extremists is a fact of experience, but it seems doubtful if it is borne out by the results of the provincial and central elections (before those of 1945-46, which were fought mainly on the communal issue). In the 1937 elections the League, already

known as the extremist Muslim party, won less than one fourth of the Muslim seats, while the Mahasabha made no showing at all against the Congress.

The argument completely ignores the strong case for a separate electorate which can be made out from the point of view of a racial or religious minority, especially one which is also underprivileged. Such a minority is bound to fear that representatives elected mainly by the votes of the majority community will become too amenable to the influence of the majority and will cease properly to represent it. The writings of Dr. Ambedkar show that such fears are not without justification.

It is true however that the abstract arguments cut both ways. The chief weakness of the argument of the Report is that it is abstract: it ignores current political realities. It ignores the evident determination of the minorities to stick to separate electorates. Worse than that, it overlooks the realities of the party system. It proceeds on the assumption of a "normal" competition for votes between two or more parties more or less at the same level. In such a situation even a small minority which is united enough to vote as a bloc can exercise great influence, (though such bloc voting is surely to be deprecated). But that is not the situation. There is no political competition. There is one overwhelmingly strong and wealthy party which can and does dictate to the minorities who shall represent them. In this situation only a separate electorate can enable a minority to return genuine representatives. While the one-party mentality persists the case for separate electorates for the minorities will remain strong. (This is of course not to say that the British acted entirely in good faith when they introduced the separate electorates in 1909 and extended the system later. But the origin of the system has no bearing on its value now.)

This is the only important departure from the high standards which this Committee would be expected to observe, and it is due less perhaps to any Hindu communal bias—it is a strange communalism which cuts down its own quota in the legislature and the government by more than half—than to theoretical prepossessions, an obstinate adherence to the dogmas of liberal democracy. For in contrast to most of the other

schemes—it is obvious as one reads them—this is an honest attempt to solve the problem in what the authors believe to be the national interest: they have no personal or party axe to grind. They may betray a Hindu bias perhaps in their attitude towards the Scheduled Castes. They regard the Poona Pact as in principle sound, and even if revision is proved necessary insist on the principle of joint voting (and make a very improper attack on Dr. Ambedkar for criticising it when he “deliberately” entered into it “after careful haggling” lasting for several hours—under the threat of Mahatma Gandhi’s suicide if he refused!) But whether or not this is to be ascribed to Hindu communalism, the authors of the Report certainly show the bias of elderly men whose ideas were formed in a ruling-class atmosphere a generation ago. Their report reads like another “instalment of reform”. They do concede universal suffrage, but they seem to be nervous about it—they do not want it for the election of the constitution-making body, or for the election of the head of the state. They quite overlook the states people, taking it as a matter of course that the position of the states will be decided by consultation with their rulers. They omit almost entirely to consider the economic foundation of their constitutional structure. They devote by far the greater part of their attention to the Hindu-Muslim problem, the obvious obstacle to the establishment of a liberal democracy, which, important though it is, is in a sense a superficial problem. They are correctly benevolent towards the Scheduled Castes and the Aboriginal Tribes and the Backward Classes, and advocate universal education and land allotments for them, but they make it obvious that to them these present a secondary problem which will solve itself once a parliamentary system gets going. Yet, according to the testimony they quote, and no doubt it is true, these groups are a majority of the population. With the equally uneducated and almost equally underprivileged mass of the Muslim community they form the great majority.

These authors are in fact working on the assumption that the progress to which they became accustomed in their early years is still going on, and that whatever happens economic conditions will steadily improve and education will filter down (they use the phrase) to the masses, who can therefore

safely and properly be left in the charge of the one or two score millions of the relatively privileged and educated for whom their constitution is really framed. But plausible as this was, say before 1914, it needs no argument that it is not valid now, and that a constitution of this liberal type, if established, would yield very different results in our day.

But though their vision is limited and out of date they are practical men and their work is not entirely waste. Their study of the fundamental rights is a valuable contribution. The rights they propose to include in the declaration are of course limited to those customary in a liberal democracy, except some specially framed for the Scheduled Castes and religious minorities. But as practical administrators and lawyers they know that a declaration of rights is useless unless machinery exists to enforce it. Accordingly they propose that legal experts should frame the declaration, dividing the rights into those which can be enforced in the law courts, and the rest, and for the enforcement of these others they propose independent minorities commissions whose sole work is to see that these principles are carried into practice. It is a useful proposal which can be adopted under any constitution.

They are in the right too, though they go against current trends, when they insist on giving the centre substantial powers. It is true that a state needs to be authoritarian in proportion as it is unpopular, and that if the new constitution is drawn up with the general consent of the people and really progressive regime emerges, it should be able to work generally by agreement with the units. However these are big assumptions, and even if they are granted they give no guarantee against local irresponsibility or sheer breakdown. It is not in our time that the state will cease to be a coercive apparatus. Nor is it a matter merely of law and order or emergencies. The constructive tasks which all agree the new regime will have to undertake will certainly need considerable powers of initiative if not of compulsion at the centre. The greatest weakness of the Coupland type of scheme, which forms the framework for the Constituent Assembly, is that the centre will be denied these necessary powers. The Sapru scheme, though its proposals for securing agreement to a

powerful centre are faulty, is right in holding that such a centre is needed.

I am indebted to Mr. A. K. Pillai, 'Bar-at-Law, for the following note on the recommendations of the Sapru Committee in regard to the judiciary.

The recommendations proceed on very conventional lines, the suggested improvements to the established system being rather superficial: (1) allowing the High Court judges also to remain in office till the completion of the 65th year as is now the case with the Federal Court judges; (2) recruiting the judges of the High Courts exclusively from the Bar; (3) vesting the Federal Court with appellate jurisdiction in ordinary civil cases too. (At this moment civil appeals from the Indian High Courts go to the Privy Council).

These recommendations are good in themselves but they touch only the outer fringes. Considered as part of a constitutional scheme for a Free India the role of the judiciary, particularly of the Federal Court, is a vital and decisive one. The all-important problem of the minorities demands special provisions to safeguard and ensure their rights and interests. It is not enough if the Fundamental Rights are declared in the Constitution, but there must be provided an effective machinery to implement the declared rights. In this context the role of the Federal Court assumes great importance. The High Courts too have to play a similar role in their respective provinces.

Here the recruitment, composition and the independence of the judiciary are of supreme concern. The judiciary must be made independent not only of the Executive, but also of political and communal influences. It is in itself a difficult problem. The Sapru Committee has not given any attention to this pivotal issue.

CHAPTER III

THE CONGRESS AND THE CONSTITUTION

THOUGH claiming to stand for all sections of the population, the Congress has concentrated attention upon the national issue and has generally refrained from committing itself to definite statements about free India. In the central and provincial elections in 1945-46 the future constitution was the main issue, and the Congress in its manifesto put forward an outline scheme. Though vague, it is all we have. On the rights of the citizen it follows, but amends, the resolution of the Karachi Session, 1931.

The election manifesto, December 1945, says that the constitution "should be a federal one with autonomy for its constituent units, and its legislative organs elected under universal adult franchise. The federation of India must be a willing union of its various parts. In order to give the maximum of freedom to the constituent units there may be a minimum list of common and essential federal subjects which will apply to all units, and a further 'optional list of common subjects which may be accepted by such units as desire to do so.'" The party stands for "the freedom of each group and territorial area within the nation to develop its own life and culture within the larger framework, and for this purpose such territorial areas or provinces should be constituted, as far as possible, on a linguistic and cultural basis."

The fundamental rights to be provided are: (1) free expression of opinion, free association and combination, the right to assemble peacefully and without arms for a purpose not opposed to law or morality; (2) freedom of conscience, and of profession and practice of religion, subject to public order and morality; (3) protection of language, culture and script; (4) equality before the law; (5) no disability in regard to public employment, office, trade or calling by reason of religion, caste, creed or sex; (6) equal rights in regard to wells, tanks, roads, schools and places of public resort; (7) right to keep and bear arms; (8) no person shall be deprived of liberty,

nor shall his dwelling or property be entered, sequestered or confiscated, save in accordance with law; (9) religious neutrality of the state; (10) adult suffrage; (11) free and compulsory basic education; (12) freedom of movement, settlement, occupation and equality before the law for all everywhere within the country.

This part of the manifesto is verbally the same as the Karachi resolution, I (1)—(14), except that "basic" has replaced "primary" education, and two clauses have been dropped: (12) no titles, and (13) no capital punishment.

Further, a clause has been added providing "all necessary safeguards for the protection and the development of the backward or suppressed elements in the population, so that they might make rapid progress and take a full and equal part in national life." The tribes and scheduled castes are specified.

The second part of the Karachi resolution headed "Labour" does not appear, but II (b) of that resolution is incorporated in the manifesto with slight changes: the state shall safeguard the interests of industrial workers and secure for them a minimum wage, proper housing, hours and conditions in conformity with international standards as far as economic conditions in the country permit, machinery for the settlement of disputes, and protection against the economic consequences of old age, sickness and unemployment. In the Karachi resolution, part VI, peasants and workers were given the right to form unions; in the manifesto this is given to workers. The Karachi clauses III, IV, V on the freeing of labour from serfdom, and protection to women and child workers disappear.

Section II (a) of the Karachi resolution—"the organisation of economic life must conform to the principle of justice, to the end that it may secure a decent standard of living"—is however greatly elaborated. The manifesto says: "Industry and agriculture, the social services and public utilities, must be encouraged, modernised and rapidly extended.....with the primary object of benefiting the masses of our people and raising their economic, cultural and spiritual level, removing unemployment, and adding to the dignity of the individual."

"For this purpose it will be necessary to plan and co-ordinate social advance in all its many fields, to prevent the concentration of wealth and power in the hands of individuals and groups, to prevent vested interests inimical to society from growing, and to have social control of the mineral resources, means of transport and the principal methods of production and distribution in land, industry and in other departments of national activity, so that Free India may develop into a Co-operative Commonwealth. The State must, therefore, own or control key and basic industries and services, mineral resources, railways, water-ways, shipping and other means of public transport. Currency and exchange, banking and insurance, must be regulated in the national interest...."

"The reform of the land system.... involves the removal of intermediaries between the peasant and the State.....on payment of suitable compensation." Voluntary co-operative farming with State help and State demonstration and experimental farms are mentioned. The burden of rural indebtedness must be removed and cheap credit made available through co-operatives. Industrial co-operatives should be encouraged as suited to develop small-scale industry on a democratic basis. Education, public health and other services should be provided on the widest scale, thus creating conditions in which every individual has an equal opportunity for advance in every field of national activity and there is social security for all.

On the communal issue long negotiations have taken place since this manifesto was issued, and the Congress has now accepted "grouping" of provinces under a centre which shall deal only with defence, foreign affairs and communications, and the finances necessary for these. This can be reconciled formally with the principles of the manifesto, but certainly puts these principles to some strain. Accordingly the party has fought the grouping clause with much vigour, and it remains to be seen how far its acceptance really goes when tested in the Constituent Assembly.

The history of the past few years gives little reason to hope that the Congress can achieve a settlement with the

Muslims which will bring about communal peace. The obstacles to such a settlement from the Congress side are shown by this manifesto. At first sight its sentiments on the matter are unexceptionable—it concedes cultural autonomy, the “maximum freedom” to federating units and even by implication a right to stand out (“must be a willing upon”); it guarantees the individual against discrimination, and protects his culture. But all this is vague. Uplift for the most backward communities is provided, but no mention is made of the specific safeguards, such as separate electorates and guaranteed proportions in education and the public services, which the minorities and backward communities have come to regard as essential. In fact these are highly unpopular in the Congress and among its more powerful supporters. The frankly expressed ideal of many congressmen is a “pure democracy”, with no safeguards for communities as distinct from individuals, and complete freedom of competition. Under such conditions those communities which possess superior wealth and/or education, *i.e.*, the higher Hindu castes, would quickly come to the top, where indeed they already are. So long as the individual thinks of himself, and is thought of by others, primarily as a member of a caste, sect or community, and the distribution of wealth and education among these groups is very unequal, this difficulty is bound to arise. We have a closely analogous problem in the economic dealings of nations. Though the industrially backward countries long ago came to see its inequity, the more advanced countries tend to regard complete freedom of trade as fair. In just the same way the average congressman regards as equitable his principle of equal chances for all, and cannot understand the others’ protests against it, because he views the matter from the angle of the economically and educationally privileged. And since he is also a member of the community which possesses a permanent numerical majority he need not fear that the less favoured communities will use their votes to destroy his privileges.

Thus the apparently democratic and equalitarian terms of this manifesto provide no foundation for a communal settlement. The League and the Scheduled Castes Federation leaders see the communal and class bias which inspires it.

Moreover even if further concessions are obtained from the Congress—as they have been—the Muslims in particular are likely to remain unconvinced. They doubt whether these concessions really represent the Congress leaders' mind. They know that even the specific provisions of the manifesto against discrimination do not represent the views of great numbers of active congressmen, who for example in many instances refuse to admit members of the Scheduled Castes into rural Congress offices, and practise discrimination based on caste and community even against fellow-satyagrahis in jail. The Muslims in particular therefore doubt how far even the sincerest concession by Congress leaders can really bind their party and community for the future.

The problem is indeed unlikely ever to be solved merely by a constitutional arrangement. It requires a change of social structure and of the prevailing mentality. Both this special need, for a solution of the communal problem, and the general economic and political needs of the country, point in the same direction—to a radical reorganisation, democratic, equalitarian, and socialistic. The proposals of the Congress have to be judged also in the light of this general need.

On the constitutional structure, the manifesto commits the party to nothing more specific than adult suffrage and a federal constitution with large powers to the units, which are to be delimited as far as possible according to language and culture. It is believed that the party favours reduction of the number of states by fusion to about twenty, thus rendering them viable and manageable units, and their government on the same representative pattern as the provinces, except for the princes. Presumably, therefore it proposes to establish an orthodox parliamentary type of democracy, republican in the provinces, monarchical in the states; and the party leaders' pronouncements are generally consistent with this.

Orthodox parliamentarism is of course entirely in line with the policy of free competition for communities and no favours, or minimal favours, for communities which the Congress prefers, and in application to a population so unequally developed is open to the same sort of objections. Initially it must lead to rule by the propertied and educated minority. Doubtless if the reforms and rights proclaimed in the mani-

desto, particularly universal education, are enforced, the time will come when a more genuine democracy will be possible. Precedents suggest that that time is likely to be measured in generations; and if the education given is "basic"—an education for the peasant, designed to keep him a peasant—it certainly will be generations. Doubtless there is something to be said for hastening slowly in such a matter, but India in the middle of the twentieth century can hardly afford this Burkean wisdom.

It will be objected that the Congress is not a conservative party. Its leader has indeed declared that it is a social revolutionary party, and some parts of the manifesto summarised above seem to have been drafted in order to give that impression. However, it is an error. The manifesto commits the party to removal of the intermediaries between the peasant and the state, i.e., abolition of the landlord system, but this, important though it is, can scarcely be called a social revolution. In regard to general economic policy the aims stated are excellent, but the means to those ends, the operative clauses, are inadequate. The means stated are ownership or control of key and basic industries, mineral resources and transport, and regulation of the financial apparatus; with these it is proposed to coordinate and plan social advance in all fields.

If the alternative ownership, as opposed to control, is adopted, such planning may be possible; but if it is merely control that will probably not be enough. Planning of a sort can be enforced, but it will be planning within capitalism, subject to the overriding condition of profitability, and showing therefore the characteristic inability of a profit system to provide markets for its own products. Moreover, as experience suggests, it will be directed by men who are in close touch with the leading business interests and will guide things in that direction and see that whatever else happens those interests are protected. There is nothing in this part of the manifesto inconsistent with the inference from political experience that the Congress will prove in practice to be a generally conservative party.

This is again borne out by the charter of rights included in the manifesto and summarised above. The rights are almost confined to those "negative freedoms" enjoyed by the indi-

vidual in a liberal capitalist society. A party which intended to set about drastic economic reforms in the interests of the majority would be inclined to state its intentions in a rather more definite form than the platitudes of the manifesto. It would tend to follow the example of the Russian constitution and include some of these aims in the more concrete and urgent form of fundamental rights. Rights recognised by progressive communities in our time are work or maintenance in unemployment, sickness, etc., and security of tenure of cultivated land; the basic labour conditions; and free health services; and when these are recognised the means to secure them ought to follow: public ownership of natural resources and the main controlling sections of the economy, such as the financial apparatus, the transport system, and the bigger organised industries, and an explicit recognition as a primary duty of the state to make full use of these assets.

Thus in spite of non-committal phrases of a more up-to-date type the definite commitments of the manifesto will take us no further than a typical capitalist democracy. But for all its merits as a system if it were attainable, this obviously could not deal with our problem. When society is so to speak in a progressive phase, capitalist democracy allows it to progress, but it has proved almost everywhere incapable of applying a sustained and powerful progressive impulse to society. But it is just such an impulse that we want: almost every other country wants it indeed, but we with our enormous and growing population, backwardness and low competitive ability clearly want it more than most.

There is therefore an inconsistency in the Congress manifesto between the constitutional scheme which it outlines and the social purposes which it proclaims. Its constitution would give power to the propertied classes, whereas its aims require that power should be exercised by the propertyless majority. The formal democracy that it provides allows a theoretical possibility that the propertyless should prevail; but all experience shows that this possibility is slight, and if it is realised the time required is long—too long to wait.

CHAPTER IV

THE CABINET MISSION'S SCHEME

IN contrast to all the other proposals mentioned in this book, the Cabinet Mission's plan of May 16, 1946 has been carried out, as regards the earlier stages of the procedure it lays down. Though this has not got us far, it has afforded the evidence of action from which to judge the intentions of all the parties involved.

It is essentially a plan for a communal settlement, which is accepted at its face value as the primary necessity. A socialist Government might have been expected to probe beneath the surface in order to get past the upper-class rivalries which have engendered this problem, but the British Labour Party is unmoved by such abstract considerations. Its recognition goes to the party which polls the votes; and the Labour Government was further impelled by its interest in securing trade advantages, and in ridding itself as early as possible of the expensive embarrassment of governing a country which it was fast losing its power to control. Accordingly the established parties in British India and the rulers in the states were accepted as the authorities to whom power should be transferred.

Paramountcy is not to be transferred to the new government. That is, the states' rulers are left free to make what arrangements they can. "It is the intention" that the states shall participate in the Constituent Assembly, where they are given 93 seats, but the mode of appointment of their representatives is left for discussion between them and British India. Some progress has been made in the negotiations between the Constituent Assembly and the Princes' Negotiating Committee, which however does not represent all the states. It is believed that those represented will send delegates to the Constituent Assembly, and that some of these delegates will represent the states people as opposed to the princes; but the attitude of the other states is still doubtful. As a by-product of these negotiations some groups of minor states have agreed to fusion with the province in which they lie.

Thus the states seem to be falling into the place in the new regime intended by the Congress for them. The British Labour Government might have exerted its influence in favour of democracy in the states and proper representation of their people in the Constituent Assembly, but was perhaps anxious not to create further obstacles to its plan of getting out of the country quickly. The Congress for its part, though apparently desiring to do so, dare not intervene too brusquely in the internal affairs of the states lest it creates similar obstacles to its plan. The states will remain a conservative influence in the Constituent Assembly and for some time in the country.

As regards the provinces, the Cabinet Mission's scheme embodies a grouping provision something like that of Coupland, but making no claim to be anything but an *ad hoc* arrangement for a communal compromise, and yielding three, not four, sections. It does preserve the unity of the country, formally; and it is arguable that the very size of the minorities in the Muslim-majority sections, and the fact that Assam will presumably have a non-league government, are safeguards for those minorities. However the real merit of the scheme is that it seems to be the only way to a communal settlement between the existing parties; indeed it emerged from the negotiations between the Cabinet Mission and the two parties as the only discernible common ground.

It provides a Centre with narrower powers even than Coupland's—in fact only defence, foreign affairs, and communications, and the power to raise finance for them. Coupland gave the centre currency and tariffs, *i.e.*, the power to enforce a common economic policy. If the three groups have different tariff policies, and therefore raise tariffs against each other, there will be little unity left indeed. The common currency is also an important economic bond, which this scheme breaks. If it is put into effect as it stands, the three areas are bound to try to achieve economic self-sufficiency. Economic rivalries will then be added to political bitterness, and unity even for defence will be hard to maintain.

This grouping plan is not however final. When the constitution is framed provinces may after the first election vote themselves out of the groups. In any case the constitution will be open to revision after ten years. The scheme is pri-

marily a method of forming a constituent assembly. This is elected indirectly by the provincial assemblies elected in 1945-46. To the objection that the franchise for these elections was narrow (it was that of the 1935 Act—extending to about one-fourth of the adult population) the answer was that time did not permit of extension. A sufficiently large staff employed to draw up the voting lists would have minimised the time. It is true however, that the initiative had by then so far passed to the two major parties that no extension of the franchise would have yielded a constituent assembly appreciably different from that now in existence, except perhaps in the representation of the Scheduled Castes and the Christians. If the Labour Government had wanted to intervene in Indian affairs to assist the emergence of a more progressive trend than that represented by the two big parties, the time to do so had already passed.

The policy initiated by the Cabinet Mission has gone ahead. The Interim Government has been formed, and the Constituent Assembly has held some sessions. Its proceedings, hitherto, which have been guided by the Congress, bear out the negative inference from earlier Congress pronouncements.

The absence from the sessions of virtually all the Muslim members is dramatic evidence of the inability of the Congress to overcome this great difficulty. It is widely held that the abstention of the League is in pursuance of a calculated policy of obstruction, but the facts do not admit of so easy an interpretation. The League first accepted the Cabinet Mission scheme, at the sacrifice of Pakistan, and even after rejecting it has always declared that it would reconsider the matter if the Congress accepted the scheme in full. This the Congress has never done. We do not know whether the Congress rejected the scheme in June, 1946 deliberately in order to keep the League out of the Constituent Assembly and the Interim Government; subsequent events suggest that this may have been the case. Since then Congress has step by step lowered its opposition to the scheme. till in January, 1947 it claimed to accept it in full. However the A. I. C. C. resolution of January 6 contained qualifications, and the speeches on it expressed sentiments, which persuaded the League that the acceptance was not complete; or at least gave the more intran-

sigent League leader sufficient excuse to maintain that it was so, and accordingly to reaffirm their rejection of the plan. The effect of eight months of manoeuvring is thus a complete reversal of the position: the League first accepted the scheme, then rejected it, and now demands its abrogation; the Congress first rejected it, then accepted it piecemeal, and worked it, alone, relieved by these astute tactics or fortunate eventualities from the obnoxious co-operation of the League. At the end the two parties are farther apart than ever, and the conviction is growing that they can never agree.

The Constituent Assembly has held two sessions in spite of the absence of the League members, and has passed a resolution defining its objectives. These are:

"... to proclaim India as an independent sovereign republic and to draw up for her future governance a constitution wherein the territories that now comprise British India,the Indian States, and such other parts of India... as are willing to be constituted into the independent sovereign India shall be a union of them all;

"and wherein the said territories, whether with their present boundaries or with such others as may be determined... shall possess and retain the status of autonomous units, together with residuary powers, and exercise all powers and functions of government and administration, save and except such powers and functions as are vested in or assigned to the Union, or as are inherent or implied in the Union or resulting therefrom;

"and wherein all power and authority of the sovereign independent India, its constituent parts and organs of government, are derived from the people;

"and wherein shall be guaranteed and secured to all the people of India justice, social, economic and political; equality of status, of opportunity and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality;

"and wherein adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes;

"and whereby shall be maintained the integrity of the territory of the republic, and its sovereign rights of land, sea and air according to justice and the law of civilised nations, .

and this ancient land attain its rightful and honoured place in the world and make its full and willing contribution to the promotion of world peace and the welfare of mankind."

The resolution implies that the states will retain their autonomy. All power and authority in union and units will "derive from the people"—a non-committal formula, which can be satisfied by minor and formal changes in the states. It may have been justified in view of the impending negotiations with the states, but its implications for the provinces may be unfortunate. It suggests trusteeship rather than democracy; it certainly implies no improvement on traditional representative or parliamentary democracy. The word democracy does not occur in the resolution.

The list of rights wears an old-fashioned air. It contains no economic clause, except the almost meaningless phrase "economic justice." "Justice, economic, social and political" may be held to imply all that is demanded, but it is perfectly compatible with trusteeship; the wording is at any rate unfortunate. The promise of freedom of expression again is qualified by the paternalistic proviso: "subject to law and public morality," which can be made to nullify all that is conceded. The promise to the minorities and backward communities is merely "safeguards"; this goes back on the Congress election manifesto, which promised provision for their advancement; it suggests a regime dominated by ideas of free competition. Finally nationalists are reassured by the promise that the country will "attain its rightful and honoured place in the world," an objective which, one may suspect, will be pursued with more ardour than the humdrum tasks of internal reform.

This carefully, indeed legalistically, phrased resolution does not commit the Assembly even to formal or representative democracy; it falls short of the Congress election pledge in this matter. It falls short of that pledge still more conspicuously in its omission to state clear principles of economic and social reorganisation. By their failure to secure the attendance of the Muslim representatives those who guide the Constituent Assembly have made it impossible to apply in this country the older traditions of democratic constitution-making; but they have not dared to go beyond them.

CHAPTER V

THE HINDU MAHASABHA

THE views of the Hindu Mahasabha represent the more extreme reaction in the majority community against the growing force and clarity of the demands of the minorities. They deserve attention however as they are presented with a plausible show of principle, and they reveal an interesting trend of thought which is undoubtedly more influential than the Mahasabha's poor showing in the recent elections would suggest.

These views were set forth in two resolutions, one on the constitution, the other on an economic plan, passed at their annual conference at Bilaspur in December, 1944. The substance of these, with some changes, formed their election manifesto in the provincial elections, 1945-46, and this manifesto is the latest and most authoritative statement of their policy.

The Mahasabha is of course emphatically opposed to the partition of the country. The constitution is to be federal. The provinces are to be demarcated on a linguistic basis. The central and provincial legislatures (presumably their lower houses) will both be directly elected, both "on the basis of adult franchise and of one man, one vote". The electorate will be joint, with reservation of seats on the population basis for minorities (it is not stated which minorities are recognised as such) "if deemed to be expedient". The electorate is given powers of initiative, referendum and recall, subject to safeguards. The federal legislature is bicameral, those of the provinces unicameral or bicameral according to local conditions. The federal government "shall be paramount". The division of powers shall be such as to give "the utmost autonomy" to the provinces, but the residuary powers remain with the centre. Separation of the legislative, executive and judicial powers is insisted on.

The states are to be part of the Hindusthan Free State, but on what basis is not made clear. This constitution, it

is claimed, would afford the princes "a golden opportunity to merge themselves into a higher and nobler entity.....herein would lie their tradition and their salvation as well". This presumably means that they are to become constitutional monarchs. The Bilaspur resolution says that the smaller states should be merged into the provinces, and the bigger states "divided into new provinces forming integral parts of the Hindusthan Free state, but reserving to the Indian Chiefs and Princes the right of privy purse and all such personal rights, prerogatives and dignities as may not conflict with the above."

The preamble to the fundamental rights provides generally against "any distinction whatever". The rights specified are (1) equality before the law and equal civic rights; (2) "all citizens shall enjoy the fruits of their labour and shall be entitled to the necessities of life without exploitation of man by man"; (3) "the state shall make suitable laws" for the maintenance of health and fitness, a living wage, the protection of motherhood and the welfare of children; (4) free elementary education; (5) right to bear arms; (6) no citizen shall, by reason of colour, caste or creed, be prejudiced in regard to public employment, office, profession or trade; (7) no dwelling shall be entered, sequestered or confiscated save in accordance with law; (8) no citizen shall be deprived of liberty except in due process of law; (9) freedom of expression and of peaceable assembly, freedom to form associations for purposes not opposed to public order or morality; (10) freedom of conscience, and of profession and practice of religion, subject to public order and morality, and right to protection of culture and language; (11) no law shall endow or restrain any religion, or give any preference or liability on account of religious belief; (12) freedom of the press, subject to order and morality. The constitution also provides that the distinction between martial and non-martial races shall be abolished, and the military strength of the state shall as far as possible be "equi-balanced among its various provinces" consistently with discipline and efficiency. There shall be no state religion. The personal law of a community shall be altered only on demand from that community, and by a four-fifths vote of its representatives in the legislature concerned.

The economic provisions of the election manifesto aim at a "harmonious combination of the benefits of capitalism and socialism". They stress economic freedom for the country, fiscal autonomy, freedom to protect industries, and to confer preference, the right to a national shipping industry, safeguarding of the sterling balances, prohibition of the ownership of land and the conduct of industries by foreigners except on terms to be laid down, nationalisation of land, key industries, public utilities and war industries, state control of other industries under a plan, technical and scientific education

The workers are guaranteed the right "to get working hours lowered so as to allow sufficient leisure" for culture etc., leave of a month per year with pay, a minimum living wage varying with the price level, protection at work from danger to health and life, protection of motherhood, welfare of children, insurance against sickness, accident, age, deformity and unemployment, the right to organise and strike, equality of educational and vocational opportunity, protective legislation on a par with that in other countries, and enforcement of international agreements.

In agriculture the aims are "to leave to the peasants and landless agricultural workers the fruits of their toil sufficient to maintain them on a par with the industrial workers", and "to make India self-sufficient so far as food-grains and other raw materials are concerned". The cultivator is assured fixity of tenure subject to payment of a fair rent and the landlord's right of possession for the purpose of cultivation; and the state is given the duty of providing education and irrigation, preventing further subdivision of holdings, encouraging collective farming, co-operation, and other such improvements

That this constitutional plan is unworkable on communal grounds hardly needs to be pointed out. Those who drafted it realise that the Muslims would never accept it. They urge the British Government to "leave severely alone the Muslim League, to rally together all nationalist members of the Constituent Assembly, and to charge them with the duty of framing a constitution for India not on communal but on national and democratic lines." They claim that their draft is

"national and democratic" and would secure "justice to all and injustice to none." We noticed in discussing the Congress proposals how easy it is for a community possessing competitive advantages to convince itself of the justice of free competition. The Mahasabha scheme shows this determination to take advantage of the Hindus' superiority in wealth, education and numbers, expressed so frankly ("one man, one vote", joint electorates, no weightages) that there can be no question of a merely unconscious bias. This aspect of the plan need not detain us therefore.

Though the manifesto contains far less anti-British demagoguery, and is altogether more restrained and matter-of-fact except of course on the communal question—the constitution outlined is if anything more nationalistic than the Congress plan. It is somewhat more centralised. It over-rides the minorities more ruthlessly. Its economic nationalism is more explicit, especially in the prohibition of foreign enterprise, and the emphasis on self-sufficiency and the adoption of modern technology and science.

It is at the same time more democratic, in the formal sense, than the Congress plan. It provides initiative, referendum and recall, and its provisions in other matters are at any rate somewhat more definite than those of the Congress manifesto.

It is also definitely more socialistic. As contrasted with the Congress manifesto it provides explicitly for the nationalisation of the key industries and public utilities. The fundamental rights (2) and (3) ("all citizens shall enjoy the fruits of their labour and shall be entitled to the necessities of life without exploitation of man by man", and the state shall make suitable laws for the maintenance of health and fitness, a living wage, etc.) go beyond the liberalism of the Congress document. The assurances to the industrial workers are certainly more detailed and specific, as are those to the cultivator, though in spite of nationalisation of the land the landlord retains the right to resume possession if he intends to cultivate the land himself, and otherwise to draw rent!

It may be significant that the socialistic provisions of this manifesto are a somewhat watered-down version of the original draft presented to the Bilaspur Conference. In that draft

the clauses assuring agricultural tenants fixity and permanence of tenure, and assuring workers of protection against the consequences of old age, infirmity and unemployment, were included in the fundamental rights. These fundamental rights also guaranteed writ of Habeas Corpus except in case of rebellion or invasion, admission into any educational institution maintained or aided by the state without distinction of colour, caste or creed, freedom from compulsory attendance at religious instruction in schools, etc., equal access to roads, wells, etc., and the right to petition the Supreme Court in respect of any infringement of fundamental rights. These omissions from the election manifesto suggest a recognition that some of the clauses would be unpopular with the Hindu electorate. On the other hand the provision in regard to nationalisation of industry, originally in the form "ownership or control", is tightened up in the manifesto.

Thus in spite of its cut-and-dried manner the Mahasabha document is not free from demagoguery. Appearances suggest indeed that the whole "socialistic" trend of the manifesto is unsupported by serious conviction or thought. Not that it is necessarily a deliberate attempt to deceive the electorate; it is rather perhaps a concession to public opinion on a matter which the party regards as of secondary importance. If it were to attain power it would probably not insist on implementing any of these provisions which aroused strong opposition, and would in any case subordinate them and adapt them to the policies which it regards as of primary importance—nationalism and Hindu predominance.

The interest of this is that it represents a trend of feeling which is widespread in the Hindu community—indeed the Congress defeated the Mahasabha so completely in the elections only because it stole most of its opponents' thunder—and is but an exaggeration or carrying further of the predominant trend in the Congress. The Congress ideology is Hindu nationalism disguised as Indian nationalism, plus formal democracy and a tinge of socialism. The Mahasabha is more frankly Hindu than the Congress, more nationalist, more democratic, though its democracy is still only formal, and more socialistic, though its socialism is no less demagogic. The Mahasabha may very well show the way the Congress is

developing, and it is plain where that way goes—towards fascism. The Mahasabha draft constitution is a warning that formal democracy, even with a socialistic tinge, may be very far from a solution of the country's problems.

CHAPTER VI.

THE GANDHIAN PLAN

MAHATMA GANDHI has never stated his ideas on the constitutional problem in a systematic way. In the earlier years of his political leadership he opposed concrete plans for Swaraj. In 1925 he was persuaded that such plans should be considered, but he never gave explicit approval to any scheme. At the Second Round Table Conference in 1931 he expressed opinions on a number of issues, but some of these opinions he has later modified. In any case he was then discussing plans of the orthodox parliamentary type, which he has never viewed with much favour. Since that time he has become theoretically more hostile to parliamentarism, and has inclined towards a decentralised democracy based on the village unit. Most of his own pronouncements and the writings of his disciples on the subject deal with general principles or the economic and cultural aspects of the policy, but one fairly detailed exposition of its constitutional implications has been published, *Gandhian Constitution for India* by Shriman Narayan Agarwal (Kitabistan, 1946), and this has received the approval of the Mahatma. The following account is derived from that book.

The scheme makes the village, or group of small neighbouring villages, the unit. This unit elects, by adult suffrage in joint electorates with communal reservation of seats, a panchayat which holds office for three years. Members may sit for three successive terms but not more. They may be recalled by a three-fourths majority vote. The panchayat elects its president unanimously: if unanimity is not obtainable the electorate chooses him from the five.

The panchayat's decisions are expected to be unanimous, especially on matters affecting minorities. Its powers cover the appointment of village servants including police ("guardians"), judicial powers (subject of course to appeal), the organisation of primary education, libraries, sport, recreation, the festivals of all the religious, assessment and collection of

land revenue, and other special taxes and voluntary donations, irrigation, soil reclamation, co-operative farming and credit, control of debts and interest rates, village industry, co-operative marketing, sanitation, water supply and medical provisions. Half the land revenue will remain with the village, which will also have other sources of income. Direct labour is recommended as a 'tax', and taxation in kind is favoured.

Corresponding to village panchayats are ward panchayats in towns.

The presidents of the village panchayats of a taluka form the taluka panchayat. Its term is three years. Its powers include control of a central police force, secondary education, inter-village roads, inter-village sport, more elaborate hospitals, model farms, banks etc., and audit of village accounts.

The presidents of taluka panchayats form the district panchayat. It holds office for three years. Its powers and duties are of the same type—a central police force, college education, specialist hospitals, irrigation, banks, etc., and the appointment of district judges.

Corresponding to district panchayats are municipalities, consisting of presidents of ward panchayats. Municipalities own public transport and water and electric supply systems.

The provinces are formed on a linguistic basis. The presidents and perhaps another member each of the district and municipal panchayats form the provincial panchayat. Its term is three years. It meets twice a year. Its powers cover a police reserve, university education and research, the management of key industries, development of the natural resources of the province, famine relief, provincial transport, and the high court.

The provincial panchayat elects its president, who is head of the province, and appoints from outside its own ranks ministers or commissars in charge of departments. The ministers are responsible to the panchayat. They hold office for three years. They are paid, not more than Rs. 500, but the panchayat members' work is "honorary in the right sense of the term". This principle of honorary service is carried through all stages.

The provinces and states federate to form the all-India panchayat. Adherence is voluntary. States which join must be represented by elected members. These states' representatives, and the president of each of the provincial panchayats, with one more member from each of the bigger provinces, constitute the panchayat. It elects its president, who is head of the state, and appoints ministers or commissars from outside its membership. The ministers are responsible to it. They hold office for three years and are paid (maximum Rs. 500). The panchayat's powers cover defence, foreign affairs, a central police reserve, all-India economic planning and management of key industries, transport and communications, currency, customs, foreign trade, all-India research and perhaps educational institutions. It appoints the supreme court judges.

Though the states are said to be free to join the federation or not, it is not quite clear what is to become of them. At one point they are spoken of as merging with the provinces, after which new provincial boundaries will be drawn; at another the Princes are asked to rely upon their righteousness to secure them justice.

Units are not compelled to federate, but partition is strongly, indeed vehemently, opposed. It is held that in a non-violent system there will be no demand for partition.

Electorates, which occur only at the primary level, will be joint, with reservation of seats, though even this is declared to be really unnecessary. All adults vote. Appointments are to be made "with due regard to the principle of fair share to all communities, consistent with efficiency". "The principle of communal representation in services shall not vitiate the Constitution of Free India."

Full protection is guaranteed to cultures, languages, scripts, education, the profession and practice of religions, customs and personal law.

Equality before the law, freedom from discrimination, freedom of speech, assembly, combination and discussion, and of access to roads, wells, etc., are guaranteed.

Basic education is free. The citizen is guaranteed work at a minimum wage and the 8-hour day. "Medical freedom"—

no compulsory vaccination etc.—is guaranteed, and the right to bear arms.

The land will be nationalised, on payment of reasonable compensation, as will the key industries, mines, railways, and air and shipping lines. These industries will however be managed by private industrialists on a commission basis.

* Like other Gandhian schemes, this constitution is a queer mixture of good and bad, rather perhaps a skillful harnessing of good principles to bad ends. It is in appearance extremely democratic, decentralised, and austere simple and economical, but as is fairly easy to see it would work out in practice rather differently.

It is formally democratic, but even here it contains a number of defects which would bias it in a conservative and even undemocratic direction.

Election is direct only at the lowest stage. This is provided deliberately in order to check corruption and the "unhealthy growth" of parties, and to ensure that the men even in the highest positions are true representatives of the people, since even the president of the all-India panchayat would have to be elected to his village or ward panchayat.

Whether these advantages would accrue may be doubted. Men with ambitions would tend to secure election at the lower stages by improper means. Those who advanced to higher levels could scarcely keep in touch with the lower, and could not serve an adequate apprenticeship in the lower levels if they could not be reelected more than twice—though it may be argued that it is healthy to compel a man after he has served three terms to stand down for one term before beginning again. However this does not compensate for the disadvantages of indirect election. The electorate tend to lose interest in larger issues, while the higher level legislatures tend to feel no strong responsibility to their public. The absence of parties, if that purpose were achieved, would accentuate this evil, since parties serve to bring the broader issues of policy before the public. Without parties the nominally-elected pyramid of panchayats would ossify into a merely administrative machine, ever more remote from popular

control and even public knowledge. Despite their obvious defects, no way has yet been found of dispensing with parties.

These weaknesses would be rendered far worse if, as is here provided, all elected persons had to serve without pay. On the pretext of eliminating improper motives, this provision confines representation above the lowest level to the wealthier classes, or those who have "renounced the world" and can live on next to nothing. (There is a wealthy class in the Gandhian Utopia. Industries will be managed, though only the smaller will be owned, by private business men. There will be an income tax and an inheritance tax.) The obstacles to the formation of parties also work in favour of the rich—their natural supremacy is left without any check, resistance to them is atomised. Thus the apparently idealistic appeal to the "spirit of service" and rejection of sordid payment for public work would leave public affairs, as in mediaeval times, in the hands of the leisured and their hirelings, together with the priests.

This would also be the effect of leaving judicial powers in the hands of panchayats working in these social conditions. The author of this book discourses at length on the unsuitability of the British legal system to Indian conditions. He complains of its expense, its formality, and the many opportunities it provides for evasion and quibbling. These are familiar and serious objections, but it is doubtful if formalities can just be done away with. Justice as administered by panchayats in the past was too often but the will of the stronger, the rule of a faction or of the most successful local bully. Gandhian decentralisation and simplification might well prove in practice a return to that tradition.

It is doubtful if at the present stage the great emphasis in this constitution on decentralisation is justified. Starting as she does at a low level, India must for some time progress through centralisation. She can hope to preserve the principle of popular control, but clearly much of the impulse must come from the top—new knowledge, research, techniques, planning, big industry, modern transport. Only when a much higher level is reached can she begin such drastic decentralisation. Nationalists have always understood this, and have complained that the apparently large local

and provincial powers allowed to the electorate in the past were of little use while the centre remained in foreign hands. The decentralisation advocated here means continued backwardness.

That this is the spirit in which the scheme is drafted hardly needs to be pointed out. This author, together with Mahatma Gandhi and the other advocates of these ideas, believes that in spite of some defects the old Indian economic and political system was essentially sound, and wants to return to it. They repudiate the charge of mediaevalism, but their proposals bear it out.

This mediaevalist spirit can be detected in many details of the plan. Thus among the duties of the village panchayat is to maintain a library: "Books in the library should be educative, having a direct bearing on the social, economic and political activities of the village." Similarly, "university education shall be confined to higher technical training and research". Low living is not even to be redeemed by high thinking. The panchayat also has to see to recreation: "Swadeshi games and sports shall be encouraged." It has further "to celebrate collectively the important festivals of all communities.....and to conduct bhajan and kirtan mandals." Of course it trains the villagers in satyagraha and organises khadi production. It has "to export only the surplus commodities and import only those necessities which cannot be produced in the village." "Indigenous systems of medicine, naturopathy... shall be encouraged." The public will enjoy freedom from compulsory vaccination and inoculation. Prohibition will be in force. It is in keeping with all this that the proposals on communal relations are in line with those of the most bigotted Hindus, and that there is no direct mention of the Scheduled Caste question throughout the document.

Thus though formally democratic the Gandhian constitution is in fact less genuinely democratic than some types of formal or bourgeois democracy which have prevailed in the West. While conceding universal suffrage it gives the classes possessed of property and status a very powerful advantage. Its whole spirit, expressed not only in detail but in its main provisions, is conservative. It can afford to let everybody vote

because the mass of people are thought to be backward enough, and under this regime would remain backward enough, to use their votes to keep their chains on. It would be democratic in the sense that the more successful fascist regimes were, or the conservative governments upheld by free parliaments—it would appeal successfully to the timid, reactionary side of the ordinary man's mind. The Gandhian Utopia, in short, is a life distasteful to the normal man, but tolerated with docility owing to drastic conditioning. The ideal man in the Gandhian scheme of things is a totally conditioned man, a free slave.

The supporters of the plan can argue that it is nevertheless what the people want, and if the rural population could be effectively consulted very possibly they would vote for a scheme of this type—except the Muslims, of course. But even ignoring that important exception, we can confidently say that the great problems before the country would not be solved. It does not ban industrial advance, but it does not believe in it, is not devised for it, and would not achieve it. It is essentially a scheme to make the best of the existing economy, and to induce the people to be satisfied with what it can give them.

It is generally agreed that there is no likelihood that this constitution will be adopted. The support of the Gandhian school goes in practice to people who propose more orthodox bourgeois constitutions. However, some of its ideas may possibly be adopted, and even if not, its influence on public affairs as an alternative ideal or platform will remain. It is worth while therefore to point out that in either case it will be an influence opposed to democracy, equality, and economic improvement.*

CHAPTER VII

THE MUSLIM LEAGUE

THE proposals of the Muslim League as stated in the Lahore resolution (March, 1940) are that geographically contiguous units be demarcated into regions which should be so constituted, with such territorial readjustments as may be necessary, that the areas in which the Muslims are in a majority, as in the north-western and eastern zones of India, should be grouped to constitute independent states in which the constituent units shall be autonomous and sovereign. The constitution will provide for the assumption by the respective regions of all powers such as defence, external affairs, communications, customs, and such other matters as may be necessary.

In regard to minorities, in both Hindustan and Pakistan, "adequate, effective and mandatory safeguards" are to be provided for the protection of their religious, cultural, economic, political, administrative and other rights and interests in consultation with them.

The resolution was clarified during the Gandhi-Jinnah talks and correspondence in September, 1944. From the published letters it appears that the League claims for the Muslims self-determination not as a territorial unit but as a nation. Thus the suggestion of Mr. C. Rajagopalachari that the areas within these provinces in which the Muslims are in an absolute majority should be demarcated was rejected. Substantially the existing six provinces, Sind, Baluchistan, the Punjab, the North-West Frontier Province, Bengal and Assam, are to become Pakistan. Similarly the suggestion that plebiscites should be taken of all the adult inhabitants of these regions on the proposal of separation was rejected, Mr. Jinnah's answer implying that the plebiscite should be confined to the Muslim inhabitants. Further, partition applies only to British India, not to the states; and the regime in Pakistan will be "democratic popular government" which "will function with the will and sanction of the entire body

of the people in Pakistan, irrespective of caste, creed or colour".

Mr. Jinnah claimed in one of these letters that "by all canons of international law we are a nation"; "the Muslims and Hindus are two major nations by any test of a nation... with our own distinctive culture and civilisation, language and literature....sense of value and proportion, legal laws and moral codes,...customs, traditions, outlook on life and of life ..." Probably his clearest explanation of the demand for partition was made in his speech at the Delhi session of the League on April 24, 1943. There he described the Congress plainly as a totalitarian party. The Congress conception, and the Hindu conception, of self-government was dictatorial. "Mr. Gandhi, besides...appointing three parliamentary zone dictators, also gradually developed permanent deputy mahatmas in almost all the provinces and zones. The object of these was nothing less than the production of a new privileged caste of Gandhists who alone were thought fit to hold office or rule the country...We learned democracy 1300 years ago. It is in our blood, and it is as far away from Hindu society as the Arctic regions. It is we who learned the lessons of the equality of men and the brotherhood of men...We are for democracy, but not the democracy of your conception, which will turn the whole of India into a Gandhi ashram.

"There are people who talk of some sort of loose federation...of giving the widest freedom to the units and residuary powers resting with the units...Federation must ultimately deprive the units of authority in all vital matters. The units, despite themselves, will be compelled to grant more and more power to the central authority...We are opposed to any such scheme...for it is bound to lead in the long run to the emasculation of the entire Muslim nation, socially, educationally, culturally, economically and politically, and to the establishment of a Hindu majority raj.

"I warn the landlords and capitalists who have flourished at our expense by a system which is vicious and wicked. . There are millions of our people getting hardly one meal a day. Is this the aim of Pakistan? If that is going to be the result of Pakistan I will not have it. If these landlords and

capitalists are wise they will adjust themselves to modern conditions of life."

Just as a great many Hindu socialists restrict their opposition to British capitalists, so we may assume that this condemnation is directed rather at the Hindu plutocracy than at plutocracy as such. However it directs attention to the economic background to the demand for Pakistan. Clearly the League leaders fear that as a minority living among a Hindu majority which is richer and better educated, and is traditionally hierarchical in its ideas as to the ordering of society, the Muslims would be gradually pushed to the bottom, impoverished, kept in ignorance, and subjected to cultural assimilation. This process would go on whether or not the Hindu leaders desired it, and even if they tried to prevent it; because it is not a matter of deliberate policy but the natural, inevitable result of the daily intermingling of communities in these relative positions. Moreover political safeguards would avail little to prevent it, as Mr. Jinnah asserts in his illustration of the federation. No safeguard can prevent cultural assimilation, or commercial dealings, in which the better educated, richer and more commercially-minded community is bound to come out the winner.

The only remedy, it is concluded, is partition, the cutting off of substantial viable areas in which the Muslims have assured majorities, so that they can control these processes, at least within their own areas, by governmental action.

It must be confessed that this is a strong argument. It is reinforced in the minds of various classes of the community by many other considerations. No doubt the ambitions of the Muslim upper and middle classes have swelled as the League has step by step increased its demands. Undoubtedly the Congress has made Mr. Jinnah's path easy by its tactical mistakes. But the main factor is fear. It arose quite suddenly when the Congress formed provincial governments in 1937, communicated itself to the Muslim-majority provinces by propaganda and through the experience of the long and obstinate negotiations, and once aroused is maintained by the normal contacts of the communities and their daily experience of their

temperamental differences. The League agitators denounce the "Brahmin-Banya" combination which controls the Hindu community and the Congress. The phrase sums up the Muslim fear of the superior astuteness and superior wealth of the Hindus. Nor can it be maintained that in our present competitive order the fear is baseless.

Thus at its own level the Muslim argument for partition is strong. The answer of the adherents of a united India is at a quite different level, where however it is also strong. This answer is at the practical level. It is generally familiar and numerical details need not concern us.

Partition as demanded by the League, that is approximately along the existing provincial boundaries, would cut off from Hindustan vast numbers of non-Muslims; indeed the number is only slightly less than that of the Muslims it is designed to benefit. Clearly this would be very unfair. Moreover the partition is to be effected without finding out whether the people concerned want it. It is possible, as under Mr. C. Rajagopalachari's formula, to draw boundaries round compact and fairly large areas in which the Muslims have everywhere a majority and over the whole a big majority. The League however rejects this plan, since the areas though large are poor and would be at too great a disadvantage economically. Moreover it would involve the partition of two provinces, Bengal and the Punjab, to which there are sentimental objections, and in particular would offend the Sikhs, whom it would leave half in Hindustan and half in Pakistan. Any partition into separate sovereign states would undoubtedly provoke intense opposition from one quarter or another. This of course omits consideration of the very large Muslim minority who would be left in Hindustan however the boundaries were drawn. The economic results must also be considered. Two neutral economists of standing, Sir Homi Modi and Dr. Matthai, were deputed by the Sapru Committee to examine the matter, and they reported that "unless some effective and continuous form of cooperation in matters relating to defence and economic development is accepted.....the division of India into separate sovereignties would spell stagnation and probable disaster"—which indeed is but common sense.

Of the compromises suggested, only one, that proposed by the Cabinet Mission, following Coupland, has ever seemed likely to be accepted. Though on a broader view it had grave defects, it had the indispensable merit of trying seriously to meet both sides. It preserved the unity of the country for the most vital purposes and yet gave the Muslims large areas in which they would be in control, in which however the provincial governments, which also would have some powers, would afford some protection to the Hindu and other minorities.

The League at first accepted this compromise. But when the Congress rejected it, and the Governor-General refused to form an interim government without the Congress, as he seemed clearly bound by the terms of his letter to do, the League reversed its decision. The Congress has now come round to formal acceptance, but with such qualifications that the League refuses to recognise it as acceptance and therefore maintains its position. On the merits of the controversy, the Congress appears to have some justification in the letter of the documents, which like many compromises tried to reconcile the irreconcilable; but the League is supported by the common sense of the matter, since, the groups being basic to the scheme, it cannot be wrecked at the start by the refusal of a province to sit in its group. The qualifications on the Congress acceptance of the scheme in its resolution of January 6 are that the procedure of the Sections "must not involve any compulsion of a province, and that the rights of the Sikhs in the Punjab should not be jeopardised. In the event of any attempt at such compulsion, a province or part of a province has a right to take such action as may be deemed necessary in order to give effect to the wishes of the people concerned." Since the Congress agreed to urge Assam to enter its section, these qualifications can be regarded as hypothetical and general. The League might very well then have ignored them and entered the Constituent Assembly.

It seems probable therefore that the Cabinet Mission's group scheme will have to be abandoned. It was the most promising attempt yet made to bring the two parties together, and no other appears to have any chance. Even if it had brought the parties into the Constituent Assembly, they would

probably have fallen out over some later issue. In short compromise seems to be impossible.

And all this controversy arises over the merest preliminaries to the drafting of a constitution of the traditional type. For though the League have given virtually no indication as to the type of constitution they propose to draw up, either for Pakistan or for the groups under the Cabinet Mission scheme, there is no reason to suppose that they intend any radical departure from orthodoxy. Thus the League solution in either form is a very partial and unsatisfactory one. It would solve, as regards a majority of Muslims, a problem which many of them consider of surpassing importance, but it would do this only at the cost of creating very serious problems, economic and political, for them and others; and it would not even make a beginning towards a solution of the economic and social problems which face both them and the Hindus.

CHAPTER VIII

THE COMMUNIST PLAN

THE Communist Party of India have not set forth any comprehensive constitutional plan, but have proclaimed some principles. Their election manifesto (1945) states them thus:

Transfer of power to a real all-India constituent assembly, which will draft the terms of the Quit India treaty.

The delegates of the all-India constituent assembly shall be elected by 17 sovereign national constituent assemblies based on the natural homelands of various Indian peoples, *viz.* Baluchistan, Pathanland, Sind, Western Punjab, Central Punjab, Hindustan, Rajasthan, Gujarat, Maharashtra, Karnataka, Andhra, Kerala, Tamilnad, Orissa, Bengal, Assam and Bihar, and carved out of the existing artificially made British provinces. These constituent assemblies shall be elected by adult franchise.

The right of full self-determination shall also extend to the peoples of Indian states; exercise of this right will enable them to rejoin their own brother people of British India in their own free homelands.

The delegates of the all-India constituent assembly shall have no more authority than that of plenipotentiaries. Full and real sovereignty shall reside in the national constituent assemblies, which will enjoy the unfettered right to negotiate, formulate and finally to decide their mutual relations within an independent India, on the basis of complete equality.

The Sikh people are assured that they will be able to exercise the right of self-determination in regard to the territory in which their own historic homelands lie, together with the rest of the population of that territory.

Bengal as the common homeland of the Bengali Muslims and Hindus shall be free to exercise its right of self-determination. The principle is a united and free Bengal in a free India.

The party pleads for a voluntary union of sovereign national states on the basis of complete democracy within each

and the utmost help to each other, the more advanced helping the less advanced through a federal centre.

The application of these formulae to the north-western and north-eastern zones is explained more fully in P. C. Joshi's pamphlet *They Must Meet Again* (Sept. 1944).

The Muslim nationalities must be given the right to establish independent sovereign states in Muslim homelands. The Pakistan state is to be framed through a separate constituent assembly based on adult franchise of all the inhabitants. In this way, it is claimed, the Congress demand for a democratic verdict on Pakistan is met, without the mechanism of a plebiscite, which the League fears would be rigged against it.

The boundaries of Pakistan are to be fixed on clearly defined principles which shall not allow the rights of non-Muslims to be sacrificed. Muslim-majority areas have the right to form their state, and go under the jurisdiction of their constituent assembly. Major territorial adjustments are to be made only by agreement with the other communities in the areas.

Specifically the Kangra district and the Ambala division are detached from the Punjab. The Jullundur division and the Amritsar and Gurdaspur districts, as the homelands of the Sikhs, are to decide by plebiscite whether they will join the Punjab. The preferable course would be for them to join the Punjab on the basis of a Muslim-Sikh pact guaranteeing them cultural rights and a due share in the administration.

In Bengal the Muslim-majority districts, and the Sylhet district from Assam, form the eastern Pakistan state. The Congress and the League are to come to an agreement whereby the rights of the Hindu minority in Bengal are protected, and the relations of Bengal with the rest of India and with the north-western Pakistan are laid down. The constituent assembly for Bengal *plus* the Sylhet district meets and frames a democratic constitution on the Russian model, with a lower house elected by the adult suffrage, from separate or common electorates as the Muslims wish, and yielding a Muslim majority; and an upper house in which the communities are equal in numbers. In G. M. Adhikari's *Pakistan and National Unity* (1943) an arrangement presumably of this type is spoken of as an autonomous Muslim-majority region within the Bengal state.

In its election manifesto the Party also demands nationalisation of key industries, control of all major industries, planned industrial development, control of all capital resources, seizure of all British capital and firms, confiscation of the illegal riches of war profiteers, and plans to be implemented through free and equal cooperation of the state, management and labour. Labour is to be assured the 8-hour day and 44-hour week, the right to strike, and recognition of unions. Primary education and hospitals are to be free; old-age pensions are to be provided. The land is to be nationalised, so that no holding exceeds 100 acres; consolidation of holdings and cooperative farming are to be encouraged. Usurious money-lending is to be abolished and the private trade in food to be eliminated, both to be replaced by cooperatives.

The distinctive feature of the plan is the emphasis on the nationalities within India, which are given complete sovereignty. The criterion of nationality is usually language, but the Punjab is divided on the religious basis. It is argued that at the stage of social evolution reached by the rural population national consciousness is appropriate and progressive: the people's urge for freedom is most naturally expressed by a demand for the freedom of the linguistic-cultural group or nationality. Thus by analogy with the Soviet Union, which at the time of the Revolution was at a similar stage, the country should be organised as a federation of these autonomous cultural entities. It is hoped that if each feels that it is really free all will consent to enter the federation. To make the assurance of freedom as convincing as possible the seventeen nationalities are declared sovereign and then asked to come together.

In this way the Muslim demand for separation is made to appear but the type of a normal process of evolution, with parallels in some of the predominantly Hindu nationalities, and is thus deprived of some of its sting from the Hindu and traditional all-India nationalist point of view. At the same time it is freed from its religious colour, by being treated as similar to the provincialism of Bengal or the Tamilnad, and by the division of Pakistan into five linguistic sections—Baluchistan, Sind, "Pathanland", Western Punjab, and Bengal.

The argument is ingenious and doubtless has some force, but is carried too far. The only demand for national-cultural freedom that matters is that of the Muslim-majority groups, and this is a practical proposition only if all of them, or at least all those in the north-west area, separate and form another federation of their own. Thus a division of the country into two, or even possibly into three, is defensible, but not into seventeen; for the idea of division is dangerous. Except for the Muslim-majority nationalities there is no serious demand for such complete separation, and this is natural because the other nationalities are not at present oppressed or exploited by each other in any important degree, and have no very strong reason to fear such oppression in the future, as the Muslim-majority nationalities have. The drive of "Dravidasthan" is not against the North of India—though it was given that colour for a time by the attempt to force Hindi into its schools—but against its own Brahmins. A separate Karnatak province might afford some material advantages to its citizens, but a separate Andhra province, though the demand for it is far more powerful, could hardly have any such effect, and is largely a matter of national pride. The only groups which have a good case for separation are the tribes, some of which live in fairly large compact areas. These people are exploited by the surrounding population and need the protection of some degree of separation. However they do not demand complete independence, and no responsible party would encourage them to do so.

In the absence of a demand for it, and of any good reason for demanding it, the offer of complete national sovereignty is unnecessary. From the constitutional point of view it involves the danger that it might lead to an excessively decentralised system, like that of the U. S. A. or Australia, where the centre lacks powers it really needs, or even to a break-up of the country into a number of national states. Competent judges consider such a break-up quite possible if the present agitation for linguistic self-determination persists. A break between Hindustan and Pakistan may be unavoidable, but would surely be regrettable; and any further division, in the absence, at present, of serious cause for it, would be more so.

Alternatively, this wanton offer of complete national sovereignty to seventeen linguistic areas might lead to a con-

stitution in which formal decentralisation had to be overcome by an unofficial or extra-constitutional centralising force working behind the scenes, as in the U. S. S. R. This must have been an important factor in the overweening concentration of power in the hands of the party and the police, a development which we surely do not want to imitate. The first signs of this power behind the scenes may perhaps be noted in the assurance given to the Sikh minority that they will enjoy self-determination. This right is exercisable by a minority—the Sikhs are a majority in no area of the size of a district—only if its decision agrees with that of the majority. The assurance reads like a promise that if the Party obtains power in the province the communities *will* vote for the same policy.

This stress on linguistic or provincial nationalism is intended not only to solve the communal problem but to help towards a solution of the states problem. The demand for unity of the linguistic groups may help to disrupt the multilingual states and to lead to an absorption of the unilingual states in the appropriate provinces.

The exploitation of national sentiment for apparently desirable ends is what is known in communist discussion as opportunism. Nationalism is a dangerous weapon to play with. We have clear warning from Europe of the risks of exploiting nationalism for purposes either of disruption or of unification. The break-up of the Austrian Empire in 1918 was a disaster for those concerned and for the continent as a whole, but such is the force of nationalism it has proved hitherto irremediable. As for political unification on the basis of nationalism, the warning is still clearer. The countries of western Europe achieved national unification before the rise of nationalism, and accordingly popular sentiment there was able to attach itself to other ideas, to democracy and liberty; whereas in Germany and Italy national unity was achieved through nationalism, which gave that sentiment a powerful hold over the public mind. This is generally recognised as a principal root cause of the victory of fascism in those countries. To overthrow the feudal and monarchical systems of the states by the help of nationalist sentiment might well prove similarly disastrous—the overthrow of passive reaction by militant reaction. Reform of the states will be progressive only if it results from

a growth of democratic sentiment among the people. Short cuts are seldom worth while.

The Communist Party demands a democratic constitution, but its exploitation of nationalism must tend in practice against democracy. Its economic demands, outlined above, would have the same tendency. They are perhaps justifiable in principle, but they are framed, and as we know are pressed in practice, in a spirit of uncompromising extremism which instead of reconciling the public to necessary changes alienates sympathy, and would if the party were successful render a dictatorial regime necessary. The whole trend of Communist Party policy is towards conflict and the dictatorship either of themselves or of their enemies. Neither the method of transition nor the goal is acceptable.

CHAPTER IX

THE SCHEDULED CASTES FEDERATION

THE constitutional demands of the Scheduled Castes Federation were set forth in a series of resolutions adopted by their Working Committee at Madras in September, 1944.

Their first demand is that the constitution must recognise the Scheduled Castes as a separate element; it is pointed out that they have been so recognised by the British authorities since the Montagu-Chelmsford Report. Further, the constitution must include, as fundamental rights which cannot be altered, (1) provision in central and provincial budgets of definite and adequate sums for the education at all levels of the Scheduled Castes; (2) reservation of Government land for separate settlements; (3) provision for adequate representation for the Scheduled Castes in the legislatures, executives, municipal authorities, the public services, and the public service commissions. It is demanded that a special officer of the status of the Auditor-General be appointed to report on the working of these provisions.

In detail, the demand for land for settlements specifies that the present habitations of Scheduled Caste people on the outskirts of villages should be removed to special independent Scheduled Castes villages. Unoccupied and reclaimed land may be used for this purpose, and land may if necessary be bought. A settlement commission shall be set up to carry out this work, and it shall be provided with five crores of rupees per year from central funds.

Representation of all minorities must be given according to a uniform principle. In particular the Scheduled Castes Federation demands representation in proportion to numbers no less favourable than that given to the Muslims. Weightages are disapproved, though not condemned outright. The electorates must be separate. Representation in the services should also be fixed on the same principle as applies to the Muslims.

The central and provincial executives should be formed as follows. The communal proportions are laid down in the con-

stitution. The prime minister and other ministers from the majority community are elected by the whole house by single transferable vote. The ministers from minorities are elected by the respective minorities in the house, by single transferable vote. The ministers are members of the legislature. The executive holds office for the life of the legislature.

The basic demand is for recognition as a separate community. Like the Muslim claim to national status, this has been vehemently disputed. It is true that the line which divides the Scheduled Castes from the Hindus is not a difference of religion or culture or language, or of a physical character such as skin colour. It is true also that differences analogous to those observed between the Hindus and the Scheduled Castes are observed among the Hindus and among the Scheduled Castes. Nevertheless the line of division is clearly marked, and the gulf between the Hindus and the Scheduled Castes is far wider than any such gulf within either group. The differences is not obvious to the inexperienced eye, but it is usually recognised, and if recognised is still normally enforced. It is of the same order as the difference between white and black in America and South Africa, which is perhaps mitigated but is certainly not obliterated by community of religion or by the existence of "poor whites" and persons of mixed descent.

However in the absence of adequate or agreed definitions of the terms involved no conclusion can be reached by this type of argument. The only way to decide the question is to consider the practical consequences of adoption of the respective alternatives.

If the Scheduled Castes are not treated as a separate community they will presumably be denied a separate electorate. They can still be represented in the legislatures by members of their own castes, but these will normally be men acceptable to the Hindu community or to its predominant party. The Scheduled Castes being almost everywhere a minority, and an uninfluential one, the Hindus can in effect decide who shall represent the minority. This is not merely possible but almost automatic, as was shown by the provincial elections in 1937 and 1946. Dr. Ambedkar has collected the figures for the 1937

election and shown that while out of the 151 Scheduled Caste seats the Congress, the leading Hindu party, won 78, it won a majority of Scheduled Caste votes for only 38 of these seats, and over all secured only 18 per cent. of the votes cast by Scheduled Caste members. The 1946 election was very bitterly fought, with a lavish outpouring of money and much terrorism; the Congress secured almost all the Scheduled Caste seats. Even so, in the provinces where the Scheduled Castes Federation is well organised it secured generally a majority of the Scheduled Caste vote, its candidates only being voted down by the Hindu voters.

This bias in representation will result, if not immediately then after a time, in a lessening of the present concern for the uplift, education, etc. of the Scheduled Castes, and a slackening of the pace of reform. Even if an otherwise progressive regime comes into being, there will result a slower rather than a faster merging of the Scheduled Castes into the body of the nation. Since at best this process of merging is likely to take generations, it is important that it should be hastened rather than delayed, as it would be by denial to the Scheduled Castes of their separate status and separate electorate.

On abstract democratic principles it may be contended that the criterion should be the wish of those concerned. Accepting the principle, it is nevertheless difficult to apply in this case, e.g. to ascertain by a vote whether the Scheduled Castes desire separation. They have little or no consciousness of community; being extremely poor and backward they are open in an exceptional degree to inducement and pressure; and it happens that organised interests exist on both sides of the issue, but immensely stronger on the side opposed to separation. A vote or plebiscite would therefore be almost meaningless. Even if a referendum could be conducted without interference, it would have no great value. Like slaves who prefer the familiar safety of their chains to the hazards of freedom, many would vote to stay as they are. Yet of those who acquire a modicum of education, a great majority, it is quite safe to say, revolt against their inferior status, and vast numbers have gone to the extreme of abandoning their religion altogether. The demand for recognition as a separate community is thus in a sense a moderate demand. To grant it would be to set aside

the (presumptive) opinion of the utterly uninstructed majority and allow the intelligent opinion of the elite of the community to prevail. The community must be led by some elite; it is better that it be their own, a group who have chosen to stand by their traditions, rather than break away, and have not yet developed any distinct class interest as opposed to the majority.

It is of course in general better that a self-governing society should be homogeneous than that minorities should exist within it. The weakness and individual suffering caused by minorities are not however removed by ignoring or suppressing them. The only benefit the majority will obtain by pretending that the Scheduled Castes are a normal part of themselves is that they will dispose of more votes as against the Muslims. In all other respects they will gain by according minority status to the Scheduled Castes. They will enable the breach to heal more rapidly, and diminish the chances of defection from Hinduism to other religions. If the Scheduled Castes are granted the status of a separate community they may be satisfied with that position, whereas if they are denied it even larger numbers will embrace Islam or Christianity, thus increasing the strength of the permanent minorities. The grant of separate status to the Scheduled Castes will not cause a permanent division of the Hindu community, as its opponents claim. It will be merely a political division, which will take the place of, and forestall, a cultural and religious division. It will hasten the coming of genuine unity.

Nevertheless the majority of Hindus oppose the demand for separation, and in particular Mahatma Gandhi did so. Mahatma Gandhi's proposals in the matter, if followed in full by the Scheduled Castes, would involve on their part uncomplaining acceptance in perpetuity of an improved but still inferior status. Mahatma Gandhi wanted the Scheduled Castes to be accepted as Sudras,* and wanted recognition of the four *varnas* as equal in status. There is no sign of acceptance by the Sudras of the Scheduled Castes as part of themselves, and while caste and *varna* are still taken seriously they are unlikely to

*This at any rate was his policy for many years. Recently he has condemned the caste system more strongly than before, but I am not aware that he has ever repudiated his proposal to replace it by the *varna* system.

achieve such a breach with tradition. It is even clearer that the demand for recognition of the *varnas* as equal is vain. Whatever may have been its origins, the psychological basis of caste as it is now seems to be the fear of pollution. It is thus probably of a similar nature to colour prejudice. Like colour prejudice therefore, caste is almost inseparably bound up with inequality. Thus while these institutions retain any vitality, neither Mahatma Gandhi nor anybody else will get the higher castes or *varnas* to regard the lower as equal.

The ultimate justification for the Scheduled Caste demand for recognition as a separate entity is the impossibility of reconciling equality with caste. While the Scheduled Castes remain in their present relation to the Hindu system the issue is not clearly presented, and people can believe in the possibility of some satisfactory adjustment without radical change, an illusion which is encouraged by the temple-opening campaign and similar reforms. A political split in the community, the removal of the Scheduled Caste villages, and the establishment of separate settlements, may be a shock sufficient to show people that the Scheduled Castes can be retained only if the whole basis of their traditional subordination, *i.e.* the caste system, is destroyed.

Given that the demand for recognition as a separate entity is justified, the consequential demands for separate provisions for education, representation in the services, the legislatures, *etc.*, and land for settlement, are justified, aside from details.

The proposals in regard to the constitution of the executive however are in a different position. The Scheduled Castes Federation makes a straightforward demand from the angle of an underprivileged minority, but it overlooks the need for political homogeneity in the executive if the regime is to achieve great positive advances and not merely to devote itself to the negative task of defending one section of the public against another. If a successful progressive policy is being pursued, the minorities' interests can be adequately safeguarded by committees of the legislature associated with the various departments, and conventions in regard to the personnel of the executive, together with the usual safeguards, a minorities commission, and so forth.

The proviso however is decisively important. Given a successful progressive policy, Scheduled Caste interests can be

furthered and reconciled with those of the majority: otherwise not. It is particularly obvious that a tolerable future for these backward communities is entirely dependent on general economic progress and modernisation of the social system. While the country remains poor competition will remain acute, and levelling up will be impossible; education in particular cannot be expanded effectively. While the ideas of caste retain their hold on the public mind the Scheduled Castes will remain despised and underprivileged. There are only two ways out for the Scheduled Castes: conversion to other religions, or the kind of drastic social and economic change advocated in this book.

CHAPTER X

THE RADICAL DEMOCRATIC PARTY'S DRAFT CONSTITUTION.

THE Hindu-Muslim problem is the great immediate problem of Indian politics, the source of the deadlock which has already existed for several years and shows no sign of loosening. Political and economic progress are possible only if this problem is solved by agreement. A solution by coercion is possible, but it would lead to regression, not progress.

The brief survey in the foregoing chapters of the solutions which have been suggested shows fairly definitely that none would give satisfactory results. Some make no attempt to solve this problem; others would certainly be rejected by one side or the other; some might be accepted, but would yield a system either fragmented or so weakened by its safety devices that it could not do the work an Indian government in our time must do.

The search for a solution of the communal problem within the circle of traditional constitutional devices and political ideas will be fruitless. This conclusion is supported by the experience of many weary years of search, during which the enmity between the communities has become fiercer and a solution so far more difficult. It is equally supported by an analysis of the social roots of the antagonism.

The struggle arises from the economic competition between the two communities, or more exactly between their middle and upper classes, the professional and capitalist classes. Initially a competition on the economic level, it has become a struggle for state power—the Hindu bourgeoisie want to monopolise the Indian state; the Muslim bourgeoisie, to whom that is impossible, want a separate state or states which they can monopolise. While the struggle remained at the economic level it might have been kept within bounds. But it has become a struggle of the one community against the other, a struggle for power, and has therefore ceased to be capable of freely agreed solution. Each side has had to mobilise the poorer classes of

its community behind it. But neither, as a privileged class, can afford to stir up the social dregs, and accordingly has limited its agitation to the religious-nationalist appeal. Thus the old religious ideologies were stressed, leaders of the appropriate type emerged, parties were organised round these parties and ideologies, and a tradition of and vested interest in communal antagonism were created. The struggle has become the main concern of these parties, and accordingly they cannot give it up. Sir Halford Mackinder wrote of "social momentum": the momenta of the two societies into which India is splitting are set in these contrary directions. To jerk them out of this pattern of ever-growing antagonism only a really profound social change will suffice.

The communal antagonism is an affair of the upper classes. If a change can be effected which reduces the present decisive weight which these classes exercise in all social matters, that will decrease the strength of communalism. If the change is also such as to reduce the intensity of competition, its beneficial effect will be so much the greater. If it can hasten the spread of a modern, scientific, rational outlook at the expense of the pre-scientific, tradition-bound mentality which is still so strong, yet another essential factor in the power of communalism will be weakened. These are the main items in a long-range solution of the problem. It must reduce the influence of the upper classes, by democratising society. It must alter the economy away from competition towards cooperation, and from scarcity towards plenty. And it must educate, not in old narrow traditions, but in science, humanism, a world outlook.

The Radical draft constitution was designed to conduce to exactly those changes. It was not drafted however, with the communal problem mainly in view. Communalism is in a sense a superficial problem, a symptom of deeper ills. The Radical constitution was drafted to give concrete expression to a general social theory which claims to diagnose and provide a remedy for those ills—the notorious and apparently incurable poverty, ignorance and inequality, and the undemocratic, inhuman character of society.

Traditional parliamentary or liberal democracy is the principal theoretical inspiration of the constitutional essays outlined in the previous chapters. The Radical theory agrees with

liberal democracy that representative government, individual freedom and progress towards equality must be the aims. But it asserts that the method of parliamentary democracy is no longer, if ever it was, adequate to attain these aims. In an earlier phase the parliamentary method did in a number of countries achieve considerable progress, and it may continue to do so where conditions favour it. But on the world scale it has undergone a very manifest eclipse in the last thirty years, and it is contended that this is no accident. Except in specially favourable conditions it has proved inadequate to deal with the problems of our time. There is no reason whatever to think that those specially favourable conditions exist in India.

The most obvious inadequacy of parliamentary democracy is in economic affairs. Devised as a negative, minimal form of government, having virtually no connection with the national economy, it has naturally been found difficult to adapt to the purpose of economic control—as Shaw said, we might as well expect a sewing machine to produce fried eggs. But economic control is the central problem everywhere in the mid-twentieth century. It is certainly the principal problem before the future government of India.

This inability to conduct national economic affairs is no doubt partly due to inexperience. It is a new job, and a big one, and has to be learnt. But the mere arrangement of committees and training of experts cannot overcome the basic weakness of the traditional type of parliament.

The system in which each adult votes as an individual member of a territorial constituency, once every few years, often on a secondary issue, gives an immense advantage to the economically privileged, who use their wealth to win elections, and also can exert continuous influence on the conduct of affairs in the intervals between elections. Now the main tasks which world conditions in the past generation have set democracies have involved the curtailment of economic privilege. The strength of the privileged class has been exerted to prevent this curtailment, and using their electoral advantages they have largely succeeded. They have produced solid, immoveable conservative majorities, or fluctuating, unstable parliaments, or permanent deadlocks; in any case governments which could achieve nothing. Hence the "failure of democracy."

Admittedly things seem to have improved since the war, though it is too soon to be sure; but that is no reason why we should not learn the lesson. It needed the most terrible catastrophe of modern times to blast away the impediments to the working of parliamentary democracy in the West, if indeed they have been removed. Yet all our constitutional experts, except the communists, want to set up in India a parliamentary system, with no assurance that our voters, or our leaders, or our privileged classes have learnt the lesson that cost the West (and us too) such a price.

Those who drafted these constitutions are not entirely unaware of the problem. Some of them realise that parliamentary democracy will not work in any proper sense in India. The more honest bluntly advocate a restricted franchise. Others believe that they can take advantage of a wide franchise, but their disbelief in genuine democracy betrays itself, not only in their conduct of elections, but even in their theoretical prescriptions, which are at bottom paternalistic. Mahatma Gandhi has always advocated trusteeship of the rich on behalf of the poor. The resolution on objectives of the Constituent Assembly implies the same principle.

The Radical Democratic Party claims to have learnt the lesson of the failure of parliamentarism, and its draft constitution is intended to overcome the weaknesses which led to that failure, while yet preserving the virtues of liberal democracy. It does this principally by rescuing the ordinary voter from his isolation, bringing him into association with his fellows in effective contact with the legislative and executive machinery, thus giving him a continuous practical education in politics; and also by putting at his disposal expert advice. This it is claimed, is the democratic alternative to paternalism, whether of the right or the left. It is the only way yet suggested to make democracy work in an illiterate country. The method is called organised democracy, and the basic institution the people's committee.

The spirit of the draft is indicated by its Declaration of Rights and Fundamental Principles and its chapter on the Economic Organisation of Society. The principal clauses of the former are:

(a) The supreme sovereignty belongs to the entire people, and shall be exercised directly through the control of the executive and legislative functions of the state, by elected representatives.

(b) The people have the inalienable right to alter and modify the political organisation of society.

(d) Autonomous provinces, formed as far as possible on the basis of linguistic and cultural homogeneity and freely agreeing to unite in a federation, shall form the Federal Union of India.

(e) All territorial units, including those that remain out of the Federal Union, shall have a uniformly democratic constitution. (This was to be achieved through the provisions for the transfer of responsibility from the British Parliament to the Indian provisional government. Since the Cabinet Mission has laid down a different procedure, it would have to be secured in some other way.)

(g) The land and underground riches are the collective property of the people.

(h) Promotion of the productivity of labour through the introduction of modern means of production is a responsibility of the state.

(i) Basic industries and the credit system shall be subject to state control.

(j) The state shall start large-scale industries under collective ownership.

(k) Cultivators are entitled to hold land, without any disability, subject to the payment of a unitary land tax to be fixed by law.

(l) The state shall promote large-scale cooperative agriculture through the supply of modern machinery and cheap credit.

(m) An irreducible standard of living for all labouring in fields, factories, mines, transport, offices and schools shall be guaranteed by minimum wages fixed by law.

(n) Adequately remunerative employment or relief is a right of citizenship.

(o) Nobody shall labour for more than eight hours a day for six days a week, and every worker shall be entitled to one

month's leave with full pay every year, and women workers to three months maternity leave with full pay.

(p) There shall be statutory provision of social security for the old, sick and incapacitated.

(q) Education for all children up to the age of fourteen shall be free, compulsory and secular.

(r) The promotion of public health and sanitation shall be a charge on the public revenue.

(s) The freedom of speech and press is guaranteed.

(t) The right of association for purposes of safeguarding and amelioration of the economic conditions and political status of workers, employees and peasants is guaranteed.

(u) All citizens are guaranteed inviolability of the person; no person shall be placed under arrest except by order of a legally constituted court.

(v) The inviolability of the homes of citizens and the privacy of correspondence are guaranteed.

(w) Citizens shall have full freedom of worship.

(x) There shall be identical rights and responsibilities of citizenship for men and women.

(y) The rights of minorities shall be protected by proportional representation through separate electorates on all elected public bodies.

The chapter on the economic organisation of society states that the Constitution is promulgated with the object of reorganising the economy of the country so as to guarantee to every citizen the material requisites of a civilised existence and adequate leisure. The Federal Union is then a cooperative commonwealth. Goods are produced to satisfy the needs of the people. It is the function of the state to plan production and regulate distribution to that end. The planning authority is constituted by the supreme political council. It controls the credit system. It will take over land, mineral wealth and railways, paying specified compensation. It can fix the rates of return on private investment, prices, wages, and working conditions. It can take over private enterprises on payment of compensation. But subject to the general principle that production is for use, freedom of enterprise, individual and collective, is guaranteed.

The part to be played by the people's committees is given in the chapter on the Source of Authority:

(4) The sovereign democratic power expresses itself through local people's committees in villages, towns and cities.

(5) The people's committees will be elected every year by all the men and women of the respective localities who have attained the age of 18 years.

(6) The number of members of a people's committee will be one-fiftieth of the total number of voters.

(9) The people's committees perform the following functions in relation to the federal and provincial governments: nominate candidates for election to the federal assembly and the provincial people's council; give constant expression to the will of the people for the guidance of elected representatives; discuss and express opinion on proposed legislation; recommend the recall of representatives on the ground that they have failed to act according to their mandate; recommend the recall of the governor-general and the provincial governor; initiate legislation; demand a referendum on any legislative or executive measure.

In addition people's committees organise referenda and provincial and federal elections, and prepare electoral rolls. The people's committees of a province give their opinion on matters in dispute between the province and the centre. One-third of the people's committees of a province can demand a referendum on any provincial legislation. More than half the people's committees of a province can require dissolution of the provincial people's council. Further the people's committees have powers of local government covering sanitation, public health, primary and secondary education, public works, cooperation, local police and judicial functions, and they can collect the necessary taxes.

The constitution is federal. The states are to be liquidated, merging with the provinces, which are to be delimited according to linguistic and cultural criteria, but subject to administrative convenience. The Princes are to be allowed revenues sufficient to enable them to live with dignity.

If the provincial people's council decides by a majority, and is upheld in a referendum by a majority of the voters on the register, the province can stand out of the federation. It can secede at any later time by the same procedure.

The federation is governed by a supreme people's council consisting of the governor-general, the council of state, and the federal assembly. The governor-general is elected for five years, directly by adult suffrage. Any citizen over thirty can stand. He presides at all sessions of the supreme people's council, signs all its legislative acts, and orders dissolution and election of the assembly. He may order its dissolution before its term is over, but if he does so against the advice of the prime minister, or if he rejects the advice of the prime minister to do so, he must seek the concurrence of the people's committees and abide by their decision.

The federal assembly is elected for four years. Members are paid. There is a member for every half million inhabitants (quarter million in the larger towns). The electorate consists of all over 18, and any voter can stand. The people's committees conduct the election and prepare the rolls. The primary and final election days are public holidays, with pay. On the primary election day the voters elect one hundredth of their number, who on the final election day assemble at the centre of their constituency to elect their member (expenses borne by the federation).

The council of state is appointed for six years. It consists of equal number of members appointed by each of the provincial governments. In each province professional groups in engineering, economics, science, medicine, law and history nominate panels of ten names each, from which the provincial government selects two each, and in addition appoints two persons who have made outstanding contributions in philosophy or the social sciences and three civil servants.

The governor-general nominates the prime minister from the federal assembly. He chooses the other ministers, all from the assembly. The council of ministers has collective responsibility and holds office while it enjoys the confidence of the supreme political council. Each minister presides over a standing committee consisting of eleven members of the assembly and eight of the council, which exercises vigilance over his department.

Legislation is first considered by the council of state. Even if this disapproves it may be passed by the assembly, but all acts must be ratified by the supreme political council. The

federal assembly may legislate on all matters, and its legislation on defence, foreign affairs, foreign trade, customs, currency, posts and telegraphs, railways, ports, shipping, air, are binding on the provinces. On other subjects the provincial political council may object, but must refer a disputed matter to the people's committees of the province. If these uphold the objection the question is referred to a federal referendum. Provincial legislation can be vetoed by the supreme political council on the advice of the governor-general or the council of ministers. The provincial government can appeal to the federal court.

The provincial governors are elected directly by adult suffrage. The provincial political councils are elected directly by adult suffrage, one member of every 100,000 (50,000 in the larger towns). The elections are conducted by the people's committees. Election days are public holidays (with pay). Members of the provincial political council are paid. The council can legislate on all matters not reserved to the federal legislature.

The governor nominates a prime minister, who chooses the council of ministers. This is collectively responsible to the council. Departments are supervised by standing committees elected from the council, which have the right to obtain all information and to consider and make recommendations on all proposed legislation. The provincial people's council is both a legislature and an executive.

The independence of the judiciary is obtained in the usual way. The federal chief justice is appointed by the governor-general, and the other judges in consultation with him. They cannot be dismissed except with the previous sanction of the supreme political council. Similarly with the provincial high courts.

In addition to the long-term solution of the communal problem which is inherent in the drastic social changes implied by this constitution, it also goes some way towards a short-term solution. As it stands it allows of partition if in a referendum a simple majority of the adults on the register declare for secession of a province. As the referendum is managed by the provincial government the objection raised by the League to a

decision of the question after the establishment of independence has no force. The League has also objected to a referendum of the whole population, demanding reference to the Muslim community alone, but this is clearly undemocratic and if it came to the point would probably not be insisted on. The reconciliation of federalism and centralism suggested in the draft would definitely be unacceptable to Muslim opinion as it now prevails: possibly some compromise on the lines of the grouping scheme would meet this objection.

The practical difficulties of partition of course remain. They would be mitigated by the conclusion of a treaty between the countries, which if reorganised as provided here would not refuse to enter into close economic relations. However even this would be unsatisfactory economically, and unstable politically, for separation once begun tends to widen and is hard to heal. It may be stated as a general proposition that union is more desirable in the public interest, but separation is easier because it tends to be favoured by the people who count. It may be claimed that if this radically democratic regime were established, public interests would have the best chance to prevail over the separatist interest of privileged classes. Presumably confident that the public interest would prevail, those who drafted this constitution go to the unorthodox length of granting provinces an unrestricted right of standing out and of secession on a vote of the majority of the electorate; it can be hoped that Muslim fears would be assuaged by this safeguard.

At the same time as the constitution, with the social changes that go with it, lessens the probability of partition, it seeks to avoid the other horn of the communal dilemma, the weakening of the centre which is usually assumed to be inevitable if the minority is accommodated within the federation.

All minorities have the safeguard of the separate electorate. A number of other safeguards have been suggested in the past. Such are abstract rights, as to equality before the law, to freedom from discrimination, etc., and the more specific rights to minimum proportions of jobs in the services, similar rights in education, and the right to representation in the ministries. There is nothing repugnant to the spirit of this constitution in these, except perhaps the last, and they could be included in a more complete draft.

This also meets the case of the aboriginal tribes and the Scheduled Castes. The draft is an outline, concerned to provide the conditions for rapid progress towards equality for all the underprivileged, and aiming therefore at the elimination of caste and other such differences. As a transition measure, until these differences are wiped out, the sponsors of this draft and other like-minded people would of course be willing to support special safeguards for the underprivileged communities. Some of these would no doubt appear in a more complete text of the Declaration of Rights and Fundamental Principles.

However the solution of the minorities problem is but incidental to the main purpose, which is to provide the framework of a society in which economic advance could be rapid, equality of opportunity and of standards could be approached quickly, and at the same time democracy would prevail and individual freedom be preserved. The economic provisions follow familiar patterns and need no elaboration here. The political structure however is new and needs some comment.

It is highly democratic. It follows the original Soviet plan in its people's committees with their right of recall, but checks the tendency of tiers of indirectly elected Soviets to become petrified and remote from the electorate by minimising the number of tiers and combining them with direct election of the governor-general, the provincial governors, and the provincial political councils. The lowest people's councils are very close to the rank and file, as they number one in fifty of the adult population and are elected annually. They participate continuously and to an important extent in the working of the government and have the right of initiative. The referendum is much used. Holidays on election day and payment of members are further provisions to enable the poorer classes to pull their full weight. It would be difficult to pervert this democratic system to the purposes of the privileged, or to establish within it the familiar party dictatorship. This is rendered difficult further by the safeguards for the liberty of the individual.

These are of the usual type, and could no doubt be made more rigorous in a complete draft. But it is a matter of experience that constitutional provisions for the freedom of the individual are of little value. The executive can always

get round them if it wants to: what deters it is its own conviction that freedom is important, and still more its fear of public reaction. Ultimately it is the public feeling in the matter that preserves the public's liberties. Now it is the central point of the theory and the propaganda of those who support this draft constitution that freedom for the individual is supremely valuable and must be preserved. If they have any influence on the public, and if the constitution which is inspired by their ideas is promulgated, the people will have the best possible guarantee of their liberties.

Those who sponsored this constitution do not underestimate the obstacles to freedom. They know that world conditions are in many respects unfavourable. Technological, industrial, military and political developments are predominantly opposed to freedom. But they say that man must not bow before his own creations; if he wants to be free he can be. And they have tried to show how. More, they can claim that of all those noticed in this book, and of all those that could have been noticed, theirs is the only attempt to deal seriously with this fundamentally important issue.

Nor do they hold any naïf belief that a proper constitution is all that is needed to secure the kind of social order they want. They are well aware that an undemocratic and unfree social system, such as prevails in this country now, could not make any use of a constitution designed for democracy and freedom. Their first task is to change society; and to that task they would summon all who agree with them in making their supreme aim the attainment of freedom.

POSTSCRIPT

THE previous chapters have recorded that in spite of their differences in regard to partition the main groups likely to be influential in deciding the constitutional future of the country are agreed that the state or states should be run in the traditional parliamentary democratic manner. The Muslim League has not committed itself even so far, but its leaders' pronouncements leave no room for doubt.

The tumultuous events of the year and the rapid political changes of the last six months have resulted in the precipitate handing over of power by the British Government to the Congress and the Muslim League, whose leaders have formed the Interim Governments of the two Dominions entirely at their own discretion. It is true that these Governments are responsible to legislatures, but the Assemblies are merely the Constituent Assemblies, under different Presidents; and—quite apart from the irregularity of the procedure, which was perhaps inevitable in the circumstances—the Constituent Assemblies were formed in such a way, by election from the lower houses of the Provincial Legislatures, that the only minority opinion they represent is that of communal groups. For political purposes, and as regards constitutional principles, they will give virtually unanimous support to their respective Governments and leaders.

The general nature of the constitutions which will be drafted, and the policies of the interim Governments, are therefore bound to be those of the two principal parties; and in the view of this book that is a misfortune.

It is not possible so early to judge how this happened, nor does the detail of events behind the scenes really concern us. Broadly things seem to have moved as follows:

The British Labour Government had perhaps its last chance to influence Indian affairs in the direction it should have preferred when it sent the Cabinet Mission. But the wartime alliance had already split into two camps, as between which Britain found herself, somewhat against her inclinations, but quite decisively, in that opposed to the expand-

ing power of Russia; the strikes and mutinies in India must have seemed a warning that Russian influence already had a foothold here, and in the absence of a settlement would spread; the Cabinet Mission therefore set itself to remove the obstacles to an agreement with the two main upper-class parties.

As between these two, the Labour Party in opposition had always inclined towards the Congress. The Congress had habitually used liberal language, and one of its principal leaders, Pandit Nehru, was an avowed socialist; whereas the League had never professed an ideology and seemed merely nationalist, and indeed tainted by theocratic and feudal ideas. Moreover on general grounds Indian unity was obviously preferable to division. The Labour Government, for its part, anxious more than anything else to secure trade advantages, was inclined to placate the interest better capable of conceding such advantages, the Hindus.

Accordingly the Cabinet Mission decided in favour of Indian unity, and exerting such pressure as the diminished British power still left it, succeeded in persuading the League to agree. The League accepted the Cabinet Mission's proposals in their entirety.

Unfortunately, as even the detached observer must now judge, the Congress chose to reject the proposals. Its resolution rejected only the interim provisions, but its objections and demands for interpretation concerned what was from the League's point of view the most vital part of the long-term provisions, the grouping clauses. It was not until six months later, in December, that it accepted these clauses as interpreted by the British Cabinet. Thus the League, never very anxious to agree, found an excellent excuse for withdrawal. It promptly concluded that the project had fallen through, and withdrew its consent.

At this point, it appears, the British changed their mind, or perhaps conservative or official influences reasserted themselves through Lord Wavell. The old-style imperialist argument, thinking only of colonial affairs and overlooking British embarrassments and Russian expansion, might favour partition, since a weak India would be a less effective threat to the remnants of British colonial power in the Indian Ocean area, and one or both of the partitioned sections

might choose to lean upon Britain through membership of the Commonwealth or a long-term alliance, and thus give her a continued foothold in the country.

If this was the purpose however, it was worked out very subtly, for at the time Wavell seemed to capitulate to the Congress. He formed an interim Government with Congress members and partisans only. Shortly afterwards, under Muslim pressure exerted by rioting, he induced this Government to agree to the admission of five members of the League. This did not involve acceptance of the Cabinet Mission scheme, and these members were therefore free to sabotage the Government from within, while the League members of the Constituent Assembly were free to refuse to attend its meetings. Whether Wavell was operating a well thought out plan to render partition inevitable or was merely submitting to circumstances, the British Government continued its efforts to patch things up, but without success. Eventually Wavell was recalled.

The attempts to win the Muslim League back to the principle of a united India, and to persuade the Congress to make the necessary concessions, continued until February, 1947. Then presumably having concluded that agreement was impossible, the British decided to quit whether the parties had agreed or not. The Prime Minister announced that British control would end by June 1948. If a constitution for a united India was not worked out by that time, they would have to consider to whom to hand over power, whether to one authority or more.

This drastic change was forced by developments in Britain. For economic reasons military commitments abroad had to be reduced. But the situation in India rendered retreat inevitable. By the formation of the interim Government in August, 1946, the British had lost effective control of the country, and were no longer in a position to reestablish it, even in case of a breakdown, unless they brought in large numbers of troops. This both finance and international politics rendered impossible. There was no advantage, and there were very great disadvantages, in clinging to a sovereignty which was now no more than nominal. To quit was therefore the only choice.

Lord Mountbatten was put in charge of the process of quitting. He either came to the country already determined to partition it, or was very quickly convinced by the rioting, which had now spread all over northern India, that the project of unity had to be abandoned. The riots were presumably his chief argument in persuading the Congress to agree to partition. He had also to persuade the Government in London both to agree to partition and to advance the date of their abdication by nearly a year. In this he seems to have been helped by alarmist reports in the British press of preparations for civil war on a still larger scale than it had hitherto assumed. He got his way, and on June 3 announced the partition of the country by August 15 and the establishment on that day of two Dominion Governments.

Such haste is uncommon, especially in Anglo-Indian politics, and Mountbatten's proceedings aroused much suspicion, increased by the British Conservative Party's approval of the plan. He left himself no time to deal with the States, which were thus apparently allowed to assume independence and break the country up into scores of fragments. However he later disarmed criticism by persuading almost all the States to accede to the Indian Union, though in doing so they surrender only minimum powers. It is already fairly clear that if sinister British interests are relying upon the old regime in the States to retain their hold on the country, their allies will be unable to serve that purpose.

Mountbatten must most of all have been alarmed by the difficulties, economic not less than communal, into which the country was evidently plunging, and must have desired more firmly established governments. These he obtained, his haste making it conveniently necessary to abandon constitutional procedures. The constitutions for the two Dominions were not yet drafted. For the interim period—which may well be as much as three years—these makeshift, but relatively strong, one-party Governments remain in power, responsible only to the respective Constituent Assemblies, renamed for the purpose, which are both solidly packed with supporters of the governing party.

The British had to go, and it is arguable that the first date fixed for their going, June 1948, was too far ahead.

Many important decisions would have had to be taken in that period, and the government in Wavell's last few months could not take decisions. It was still nominally responsible to London, but actually responsible to the two party centres in India—surely difficulty enough; and these parties in their turn were engaged in bitter controversy which apparently penetrated even within the Cabinet, while their followers slew each other in multitudes in the streets. Given that position the decision to divide and quit was reasonable enough, but Mountbatten may well have feared to give anybody time for second thoughts, which might have forced him back into the familiar routine of disagreement, while interim administrators exerted an ever feeblér grip upon a catastrophic situation.

The British had to go, but they might have decided upon a different solution of the problem before going. The very rioting which finally forced their hands may by now have made them doubt their policy.

This does not mean that any solution would have been possible that differed only in its communal provisions. Evidently there would have been no advantage in handing over to a united India Government, that is to the Congress alone. It has been maintained that the difficulty could have been avoided by a proviso that the provinces, or the groups under the Cabinet Mission scheme, should have a right to secede after a period of trial, say of ten years. But clearly the League would never have agreed. It would have said that a parting decision by the British, assented to unwillingly by the parties, had no binding force. In any case the League was then on the crest of the wave of popularity: from its angle the time to strike was now. It would not have needed its leader's strategic sense to understand that to accept a ten years' postponement would have been to throw away the victory after having won it.

By the end of 1946 partition was unavoidable. The Congress leaders themselves had most reluctantly to agree to it, not because of British pressure; since Britain no longer had the power to compel decisions on major issues, but because of the facts. The only way in which partition might have been avoided was the adoption of a quite different policy

some time earlier. Neither the League nor the Congress could have denied its own nature by adopting such a policy, but the British Labour Government, had it acted in accordance with its principles, could have done so, and it is possible that when it came to power, in August 1945, the time was not too late.

This policy would have directed attention away from the considerations that make for communalism and towards the far more urgent and practical problems of popular welfare. It could have enforced effective price control by entrusting stocks and distribution to cooperative societies or *ad hoc* elected local bodies. It might have made "Grow More Food" a reality by taking over substantial areas of uncultivated land and working it directly under public management. It could have relieved postwar unemployment by instituting other necessary public works, roads, land reclamation, irrigation projects and the like. It could have put in hand urgently necessary new industries, such as the production of chemical fertilisers.....Not propaganda but action, on a really big scale, where possible drawing the people into practical work in their own immediate interests; such action, pressed on with all available resources, and with a definite plan, might have resulted in the rise of a popular state on a pattern like that outlined in the last chapter. And then not only the economic but the communal problem might have been solved.

The opportunity is past, and it is needless to argue whether the initiative could have succeeded. What is important now is to realise that a programme of this type is still required. The communal situation may be past mending, but the economic problem can never be given up in despair, and so far as a solution is possible with our human and natural resources, it seems best attainable in this kind of way, and perhaps not at all, or not without a long interval of intense suffering, in any other way.

The followers of orthodox nationalism have decided upon a different way. They are drafting a liberal constitution of the traditional parliamentary type. They evidently believe that they will be able, after the interim period, to carry on such a state—the honest expecting to evolve a liberal

society after the model of nineteenth-century Europe, and the cynical no doubt calculating that though the electorate is suffering and will suffer acutely, it is ignorant and docile enough to be managed.

Both schools, the trusting and the cynical, underestimate the crisis in which the world and India are involved. They seem not to have asked themselves why liberal democracy, in spite of its manifest virtues, has died out so widely and is proving so difficult to revive where that is being attempted. They do not even notice, apparently, the special difficulties that face India as she enters upon self-government.

Our population is rising fast and our production, already very inadequate, is falling. If we escape actual famine, we shall certainly have to endure many years of acute hardship. We can hope for little help from abroad, while our capacity, either technical or political, to help ourselves is problematic. Our literate population is a small proportion of the whole, and the public in general, literate and illiterate, has been schooled for thirty years past in herd-politics and has shown a marked predisposition that way. In these conditions to expect a liberal democracy to emerge is indeed optimistic.

A liberal democratic constitution is suited at best to the needs of the educated and propertied minority—certainly less than a quarter of the population. They can understand it, and in favourable conditions could be expected to manage it with satisfaction to themselves. If a period of rapid economic expansion were ahead, this minority might count on acting as trustees for the illiterate majority and getting their backing, so that the parliamentary machine would work satisfactorily even with universal suffrage.

But no such expectations can be entertained. The economic position is rapidly worsening, and until the increase of population is checked and the national economy is drastically reorganised it will continue to deteriorate. The tension between the classes is obvious at a glance. The old docility is going fast. If these conditions persist there can be no question of trusteeship or of the classes securing the acquiescence of the masses in parliamentary government. The liberal democratic machine will not work.

We are all set for that stampede towards dictatorship with which similarly backward countries—and indeed countries which were far less backward—have in critical situations reacted to the inadequacy of parliamentary democracy.

This is the fundamental defect of the Delhi Constitution, of which the full Draft has now been published. It is in its main outlines a liberal constitution, to be imposed upon a society which is not a liberal society, and cannot be expected to make such a constitution work. Those who drafted it do however seem to have had some realisation of the difficulty, and they have attempted, while retaining the form of a liberal system, to render it workable. This they have done by concentrating power at the centre, and by providing safeguards against breakdowns, abuses, and even criticism.

Thus the guarantees of individual rights made in Part III, Art. 13 are accompanied by comprehensive reservations which enable the government to annul them more or less completely. The freedom of speech and expression is subject to the existing law, and any future law of "libel, slander, defamation, sedition or any other matter which offends against decency or morality or undermines the authority or foundation of the State." The right to assemble peaceably and without arms is also subject to the existing law, and any future law imposing restrictions "in the interests of public order." The right to form associations or unions is again subject to the existing law, and any future law imposing restrictions "in the interests of the general public." Other articles of the Draft provide the State with ample emergency powers, and powers to punish abuse of these freedoms.

The Draft guarantees freedom of expression, subject to the restrictions just mentioned, but in spite of a proposal from the floor of the Constituent Assembly, the freedom of the press was not explicitly included. In practical working the freedom of the press is next to the independence of the courts, the most important guarantee of civic freedom, since it is an essential means to the defence of all the freedoms.

The Directive Principles of State Policy (Part IV) remain merely directive: they are not enforceable by any court, and they lay no specific obligation upon the Governments. Some of them might have been made, if not justiciable, at least as

specific as Art. 36, which names a period (10 years) in which its goal of a complete system of primary education is to be achieved.

The President is elected not directly but by a narrow electoral college formed from the Union and State legislatures. The President's powers, on the other hand, are very extensive. In an emergency (Part XI), which may be declared, on the President's sole authority, before the actual occurrence of war or domestic violence, he can make himself complete dictator for a period of six months, and can suspend the fundamental rights. In normal times he is the nominal repository of the executive power and supreme commander of the defence forces. He has the usual power of pardoning offenders. He appoints the Attorney-General. He is supplied with all decisions of the Council of Ministers, and any other information he may call for. He can compel Parliament to reconsider any Bill, other than a Money Bill, and to consider any amendment he may propose. He can summon, prorogue and dissolve the House of the People, address the House or Houses, and send messages to either House. When Parliament is not in session he can legislate at his discretion. He can "authenticate" expenditure in excess of the sums passed by Parliament. Indeed the Drafting Committee seem to have been trying to compromise between a presidential and a parliamentary cabinet form of government. That problem is not our concern; we wish only to point out that an indirectly elected President is given dangerously wide powers.

Some members of the Drafting Committee favour appointment of the State Governors by the President from a panel nominated by the State legislature; though others would prefer the Governor to be elected directly by the electorate. The Governor has the same sort of powers of legislation when the legislature is not in session, and of declaring a state of emergency, as the President. He can, by declaring a state of emergency, hand over the government of his State to the Union, and it remains in the control of the Union so long as he and the Union Parliament agree that it shall do so.

The powers of the Union, as opposed to the States, are very wide. In particular, if the Council of States (which is indirectly elected, through the State legislatures) agrees by a

two-thirds majority, the Union can override any or all of the State governments on any issue at any time. The States have no power independently to alter their constitutions. It is in fact a highly centralised federation. The complaint has also been made that the Union has an undue share of the financial resources.

The Union Parliament, finally, has the power to amend the constitution without consulting the electorate.

All these point to an attempt to circumvent the democratic intentions of the public. The attempt is to safeguard the state against the risks of breakdown, or "extremism", but to do so by suppression, not by guiding the people's energies into constructive channels. It is true that the people are not ready for a liberal constitution. These provisions are indeed a confirmation of the criticisms made by the Radical Democratic Party, and repeated in this book, against liberal democracy as a system for India. But the best way to remedy that situation is not over-centralisation, power to the state, and depriving people of their liberties. It is a different form of state, suited to a people who desire to be free but are still very imperfectly educated and lack experience of self-government. The Draft has been drawn up by lawyers, true representatives of the liberal tradition at its narrowest and most formal, whose basic assumption is an abstract man, member of a society of equals, who has to be kept in order by legal restraints, and otherwise left to himself. The Directive Principles of State Policy remain in their separate Part, without any influence upon the legally enforceable provisions of the Constitution. The Draft should have been drawn up by people with a broader outlook and a truer grasp of the nature of man, and in particular of the people of India for whom they were legislating.

That the fears expressed in this book are not imaginary is shown by developments since the assumption of power by the leaders of the Congress in 1946. The actual trend of legislation and administration has been startlingly unlike the idealistic pronouncements of Part III and Part IV of the Draft Constitution, and very much more in accordance with the safeguards mentioned above. The regime is scarcely less oppressive than its predecessor. In regard to the freedom of

the press it is generally admitted to be worse. Its leaders have shown marked intolerance even of constitutional opposition. Admittedly under some provocation, it has suppressed two opposition parties and imprisoned several hundreds of their leaders. Its administration and policy in economic matters have proved to be open to influence from the wealthier classes, and from the point of view of the aims set forth in Part III must be pronounced a dismal failure. Distress over the country as a whole is probably more acute than during the war.

Once more, the only remedy yet suggested which seems to hold any hope is that suggested in the Draft Constitution prepared for the Radical Democratic Party and outlined in the last chapter of this book. That constitution is intended to bridge the gap between the educated and propertied minority and the majority without those qualifications. It provides a democratic machine which, it may be hoped, even the poorest could understand and use for their own benefit. Its democracy is therefore firmly based. It should be able to withstand the totalitarian threat and preserve government by consent and individual liberty. At the same time it would be in intimate contact with the people, and would offer them a chance to benefit from their own efforts, so that it would be better able than other systems to harness their energy and initiative to constructive tasks. It offers a reasonable hope of both liberty and prosperity. The way the country is now going, and seems likely to go under the Delhi Constitution, cannot be said to offer an honest prospect of either.

